DOCUMENT RESUME

ED 183 133 IR 008 034

AUTHOR	Greene, Susan C.: And Others
TITLE	Television Programming for Children: A Report of the Children's Television Task Force.
INSTITUTION	Federal Communications Commission, Washington, D.C.
PUB DATE	Oct 79
NOTE	194p.
EDRS PRICE	MF01/PC08 Plus Postage.
DESCRIPTORS	*Broadcast Industry: *Childrens Television: *Compliance (Legal): *Educational Policy; Educational Television: *Federal Regulation: Marketing; Programing (Broadcast): Television Commercials: Television Research
IDENTIFIERS	*Federal Communications Commission

ABSTRACT

These two volumes of a 5-volume report on commercial broadcaster compliance with the Federal Communications Commission (FCC) 1974 policies on programming and advertising to children provide an overall analysis of children's television, as well as a detailed analysis of broadcast industry compliance. The first volume reviews the social, cognitive, and economic factors that affect the amount, types, and scheduling of children's programs, and discusses policy options open to the FCC with staff recommendations. The analysis of broadcaster compliance in the second volume is based on a series of studies examining the policy impact on the overall amount of programming designed for children 12 years and under, the amount of educational programming, program scheduling, and overcommercialization on children's television and related advertising issues. The effectiveness of the present license renewal form as a method of assessing compliance is also examined. (CMV)

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Television Programming for Children:
A Report of the Children's Television Task Force

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October, 1979

IR008034

ACKNOWLEDGEMENTS

The Children's Television Task Force thanks the following individuals for their assistance and cooperation:

Rita Saitta for her particular dedication and good humor throughout the Task Force's term;

Jacqueline Singleton, Mary Thaxton, Marie Moyd, Pam Wellman and all of the support staff in the Office of Plans and Policy for their many long hours preparing the report;

Winifred Carson, Kathy Grant and Stacey Bouchard for their legal and research assistance above and beyond the continuing calls;

Margo Bester-Markowitz, Joe Lynott, Sandy Suominen and Elizabeth Berman without whose preliminary work and support this final report would not be possible;

Nina Cornell and Michael Pelcovits who made substantial contributions of time and effort during the final stages;

Ceci Hiramoto, John Abel, Gail Crotts, and Lou Silversin, former staff persons;

Jerry Duvall, Mike Klein, and Doug Webbink for their many helpful insights into the economics of the broadcasting system;

The Broadcast Bureau and the Office of the General Counsel for helpful reviews;

And the staffs of the various offices throughout the Commission who contributed towards this projects completion.

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CHAPTER ONE

INTRODUCTION

In 1974 the Federal Communications Commission adopted a series of policies and guidelines designed to increase the amount and scheduling of educational and informational television programs for preschool and school-age children, to decrease the amount of advertising on children's programs, and to eliminate certain selling practices.[1] Last year the Commission reconstituted its Children's Television Task Force and requested that the Task Force determine whether commercial broadcasters have complied with the Commission's 1974 policies.[2]

Although the regulatory issue is compliance with the 1974 Children's Television Report and Policy Statement, (Policy Statement), the Second Notice of Inquiry in Docket No. 19142 (Second Notice) placed compliance in the larger context of new technologies, alternative program sources, and similar factors. In this setting, compliance cannot be determined without first assessing the consequences for children as television viewers of the combination of regulations that now exist and of market forces. The assessment of those consequences has brought insights into factors that go well beyond the jurisdiction of this agency, but are vital to a full understanding of the scope and intricacy of the issues surrounding children as television viewers. We hope that other institutions, such as Congress, public broadcasting, the Office of Education in HEW, and the Federal Trade Commission, which have primary responsibility for certain aspects of children's television, will take our observations into consideration. For only if all of these institutions act in concert will the issues involved in programming and advertising for children be satisfactorily resolved.[3]

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[1] Federal Communications Commission, Children's Television Report and Policy Statement, 50 FCC 2d 1 (1974), recon. denied, 55 FCC 2d 691 (1975), aff'd sub nom., Action for Children's Television v. FCC, 564 F. 2d 458 (D.C. Cir. 1977). The docket of which this Report is a part was instituted in 1971. First Notice of Inquiry, Docket No. 19142, 28 FCC 2d 368 (1971).

[2] Federal Communication Commission's Children's Television Programming and Advertising Practices: Second Notice of Inquiry Docket No. 19142, 68 FCC 2d, 1344 (1978).

The Commission issued its Second Notice of Inquiry, in part to evaluate the effectiveness of broadcasters' self-regulation with its 1974 policies on programming and advertising to children. The staff conducted in-house research and commissioned contract research to determine the effectiveness of industry self-regulation. Our analysis shows that broadcasters have not complied with the programming guidelines and, generally, have complied with the advertising guidelines.

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[3] Issues that are the responsibility of other public and private institutions are discussed in detail in chapters four and five of this volume.

The staff divided its analyses into four main areas:

(1) overall amount of programming available for children;
(2) amount of educational, instructional and age specific programming;
(3) scheduling of children's programs;
(4) advertising:

The evaluation of the overall amount of programming available for children revealed an increase of .8 hour weekly in the average amount of time devoted to children's programs in 1977-78 as compared with 1973-74. The average amount of time per network affiliate in 1977-78 was essentially the same as in 1973-74. The average amount of time per network affiliate devoted to network-originated children's programs decreased in 1977-78 compared with 1973-74. Network affiliates, however, did devote significantly more time to programs from syndicated sources. The average amount of time devoted to locally-produced and originated children's programs on network affiliates also decreased in 1977-78 compared with 1973-74.

Independent stations devoted significantly more time to children's programs in 1977-1978 than they did in 1973-1974. The average amount of time per independent station increased by 3.7 hours per week. Independent stations devoted significantly more time to airing children's programs from syndicated sources in 1977-78 than in

1973-74. Independent stations aired fewer minutes of locally-produced programs during 1977-78 than in 1973-74. Analysis indicates that the increase in the amount of children's programming is due primarily to syndicated programs on independent stations, the majority of which are located in the top fifty markets.

Staff and contract research show that the Policy Statement produced insignificant changes in the amount of educational and instructional programming available to children since 1974. Thus there has been no broadcaster compliance in the area of educational and instructional programming for children. Since educational and instructional programming is by its very nature age specific, we also have concluded that broadcasters have not complied with the Commission's policy on age-specific programming.

The staff found scant change in the practice of scheduling most programs for children on Saturday mornings. The majority of children's programs on network affiliates is aired on the weekends. The majority of independent stations' children's programs is broadcast weekdays.

As indicated, the staff found basic compliance with the self-regulatory NAB Code in advertising as well as with the FCC's policies on host selling, product tie-ins, and separation devices. In view of this data we have concluded that broadcasters have not complied with the programming policies defined in the Policy Statement and have complied with the advertising policies.

The Federal Trade Commission (FTC) is also investigating the issue of advertising on children's television. That proceeding, which has been underway for more than two years, is about to consider in detail the disputed issue of the harmful effects of advertising on children. Although the FTC submitted its entire record in our docket, our proceeding has been closed for comments for almost six months. We therefore have not had the benefit of more recent submissions to the FTC on this issue. In addition, in view of our findings of broadcaster compliance with the advertising guidelines established in the Policy Statement and the FTC's more extensive commitment of time and resources to investigate the effects of advertising on children, we will await the conclusion of the FTC proceeding on children's advertising before we consider whether any further action by the FCC is necessary. Consequently, this report will focus exclusively on the issue of children's television programming.

This report is divided into five volumes. Volume I is our overall analysis of children's television. This volume reviews the social, cognitive, and economic factors that affect the amount, types and scheduling of children's programs. Volume I then discusses policy options that are available to the FCC and staff recommendations.

Volume II is a detailed analysis of broadcast industry compliance with the 1974 Policy Statement. The fundamental question posed by the Second Notice was whether self regulation by commercial broadcasters has been effective in meeting the standards and guidelines established by the FCC in 1974. In trying to answer that question, the Task Force staff developed and completed a series of studies that, in addition to studies submitted in response to the Second Notice, formed the basis for our evaluation of broadcaster compliance.

Volume III consists of four compliance studies conducted by the Children's Television Task Force that are the supporting documentation of the staff analyses of broadcaster compliance with the Policy Statement and a staff analysis of advertiser-supported television broadcasting markets.[4] Volume III also includes a summary of the Task Force's activities and a summary of the formal record submitted in response to the Second Notice. Volume IV consists of contract research that measures the amount and scheduling of children's television programs. Volume V consists of contract research on issues relating to children and television.[5] In undertaking this study of children's television we were continually surprised by the lack of policy relevant-information. This proceeding has provided a unique opportunity for the FCC to fund analyses that may help to close this information gap. The papers included in Volumes IV and V have assisted the staff by providing a more precise historical and factual record about aspects of programming and advertising available to children. We hope that these papers will be widely read and used by other federal agencies, broadcasters, private parties, and Congress.

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[4] The studies in Volume III are Brian F. Fontes, Demographic Analysis of Children's Television Viewing; Amount of Children's Instructional Programming for the 1973-1974 and 1977-1978 Broadcast Seasons; Non-Program Material Time on Saturday Morning Children's Television; Separation Devices Used on Saturday Morning Children's Television; and Jerry B. Duvall, An Economic Analysis of Advertiser Supported Television Broadcasting Markets.

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[5] Volume IV contains John D. Abel, Amount and Scheduling of Children's Television Programs: 1973-74 and 1977-78. Volume V contains Ellen Wartella, Children and Television: The Development of the Child's Understanding of the Medium; Marilynne R. Rudick, Children's Television: Alternative Media and Technologies; Anthony Smith, Television Advertising and the Child: A Working Paper on Regulatory Approaches in Europe, Canada and Australia; and Joseph Turow, Program Trends in Network Children's Television: 1948-1978.

CHAPTER TWO

HISTORY OF THIS PROCEEDING

Children's Television Report and Policy Statement

Five years ago, after an extensive rulemaking proceeding that included three days of hearings and over 100,000 comments from the general public, the Federal Communications Commission issued its Policy Statement, in which it established that children are a unique audience whose special needs and interests every commercial broadcaster has an obligation to serve.[6] Specifically, the Commission stated that broadcasters had an obligation to provide certain types of programming and scheduling for children and to eliminate certain unfair selling techniques and overcommercialization on children's programs. The Commission identified the programming and advertising practices, established guidelines, and put broadcasters on notice that they had a responsibility to meet these guidelines. The Policy Statement set broad standards in the programming area and more rigorous standards on time limits for non-program material, certain selling practices, and use of separation devices.[7] The Commission did not adopt rules, but instead permitted broadcasters to voluntarily come into compliance with the Policy Statement; however, broadcasters were put on notice that, in evaluating industry compliance at a later date, "it may be that the question of rules will be revisited."[8]

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[6] FCC Children's Television Report and Policy Statement, 50 FCC 2d 1 (1974) recon. denied 55 FCC 2d 691 (1975), aff'd sub nom. Action for Children's Television v. FCC, 564 F. 2d 458 (D.C. Cir. 1977).

Programming. In the area of programming, the Commission stated that broadcasters had a responsibility to:

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[7] The programming standards in the 1974 Policy Statement are as follows: licensees must make a "meaningful effort" to present programs for children; a "reasonable amount" of programming must be designed "to educate and to inform--and not simply to entertain"; licensees must make a "meaningful effort" to present age-specific programming, and "considerable improvement" must be made in scheduling children's programs. Id. at 5-8 (paras. 20, 22, 25, and 27).

On advertising, broadcasters were to comply with the NAB Code limits for nonprogram material, "maintain an adequate separation between programming and advertising", eliminate the use of a program host or other program personality to promote products in the program in which he appears ("host selling"), and eliminate any practices in the body of the program that promote products in such a way that they may constitute advertising. Id. at 12-17 (paras. 43, 44, 52, 53).

[8] Id. at 6 (para. 29) f.f. 6.

- Provide "diversified programming" for the child audience, including programming to "further the educational and cultural development of children."[9]
- Present age-specific programming designed specifically for the preschool or school age audiences, and particularly programs of an educational or informational nature.[10]
- Remedy the existing "overall imbalance," whereby most or all children's programs were scheduled on weekends, with a more balanced program schedule.[11]

Advertising. In the area of advertising, the Commission stated that broadcasters had a special responsibility to protect children because of their great vulnerability to commercial pitches and their inability to distinguish the difference in purpose between programming and advertising. Based upon these special characteristics of the child audience the Commission adopted specific guidelines on advertising practices. All broadcasters were expected to:

- Reduce advertising on children's programs to the limits established by the National Association of

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[9] Id. at 5 (paras. 17-18).

[10] Id. at 7-8 (para. 25).

[11] Id. at 8 (paras. 26-27).

Broadcasters (NAB) Code.[12]

- Maintain a "clear separation" between program content and commercial messages.[13]
- Eliminate the practice of host selling (using characters who appear in the program to promote products).[14]
- Eliminate the practice of tie-ins (advertising practices that promote products in the body of the program itself).[15]

As with the programming guidelines, the Commission permitted the broadcasting industry to comply with the Policy Statement's advertising guidelines without imposing regulations. The Commission cautioned, however, "If it should appear that self regulation is not effective in reducing the level of advertising, then *per se* rules may be required."[16] The Commission further warned that noncompliance with the guidelines would raise questions at renewal about the adequacy of a broadcaster's performance.[17]

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[12] *Id.* at 12-14 (paras. 39-45).

[13] *Id.* at 15-16 (paras. 49-50) and related footnotes.

[14] *Id.* at 16 (para. 51).

[15] *Id.* at 17 (para. 53).

[16] *Id.* at 13 (para. 42).

Broadcasters were given until January 1, 1976, to come into full compliance with the Policy Statement.

License Renewal Form

Subsequent to the release of the 1974 Policy Statement, the Commission amended its license renewal form (FCC Form 303) in order to monitor the effectiveness of the self-regulatory guidelines.[18] The Commission noted that this information "will serve in part as a basis for determining whether self regulation can be effective."[19]

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[17] Id. at 14 (para. 45).

[18] FCC, Memorandum Opinion and Order, Docket No. 19142, 53 FCC 2d 161 (1975) (renewal form amendments); Memorandum Opinion and Order, Docket No. 19142, 58 FCC 2d 1169 (1975) (Instruction amendments). In the license renewal form, children's programs are defined as "Programs designed for children: Programs originally produced and broadcast primarily for a child audience 12 years old and under. This does not include programs originally produced for a general or adult audience which may nevertheless be significantly viewed by children." Id. at 1169.

[19] 50 FCC 2d at 13-14 (para. 43). Form 303 Application for Renewal of License for Television Broadcast Stations requires broadcasters to provide the following information:

- Describe programs designed for children, indicating source, time, day of broadcast, frequency, and program type. Exhibit must be limited to three pages.
- Provide information about advertising practices in excess of the NAB Code limits during the license term.
- Provide information about proposed commercial limitations during the forthcoming license term.

Action for Children's Television v. FCC

Action for Children's Television, a petitioner in the original proceeding, challenged the 1974 Policy Statement, claiming that the Commission's failure to adopt formal rules was an abuse of its discretion. The Commission asserted that, since the Policy Statement was the first comprehensive statement of the obligations of broadcasters to the child viewing audience, it was appropriate to accord the industry an initial opportunity to demonstrate whether an adequate remedy was possible without formal rules.[20] The Commission stressed that it had "made abundantly clear that it holds certain concrete expectations for broadcasters' self regulatory efforts," and emphasized its intent to "monitor broadcasters through 'private attorneys general' and through its data collection process" and "to take further action including the adoption of specific rules to deal with any problems that the industry's self regulatory effort does not meet."[21] The Commission specifically cited assurances to this effect given to Congress.[22]

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[20] FCC brief at 17-18, Action for Children's Television v. Federal Communications Commission, 564 F. 2d 458 (D.C. Cir. 1977).

The Court of Appeals affirmed the Commission's actions and stated that broadcasters have "public interest obligations to the child audience" and that general improvements must be forthcoming.[23] Finally, the Court recognized that the success of the Commission's policies depended on "the extent to which the Commission and the public monitor the level of actual licensee performance."[24]

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[21] Id. at 47.

[22] Statement of Chairman Richard E. Wiley before the Subcommittee on Communications of the House Committee on Interstate and Foreign Commerce, July 17, 1975, as cited in Id. at 51.

[23] The Court affirmed the Commission's authority to act by either policy guidelines or by specific regulation, stating that "we see no compelling reason why the Commission should not be allowed to give the industry's self regulatory efforts a reasonable period of time to demonstrate that they will be successful in rectifying the inadequacies of children's television identified in the Children's Report." Then the Court went further, stating:

> ". . . we believe that the Commission may well have adequate authority to regulate in this area and even perhaps to the extent proposed by ACT.. . ."

Action for Children's Television v. Federal Communications Commission, 564 F 2d at 480 (D.C. Cir. 1977).

Second Notice of Inquiry

In July 1978, consistent with its commitment to Congress and to the court in the ACT case, the Commission adopted the Second Notice and reactivated the docket on children's television.[25] The purpose of the inquiry was to assess the effectiveness of its 1974 programming and advertising guidelines and to assess policy actions that could be considered as alternatives to these guidelines.

In addition to questions about the effectiveness of the 1974 Policy Statement, the inquiry raised questions concerning (1) the definition of children's television programs; (2) information necessary to monitor licensee compliance; (3) economic consequences of present Commission policies and possible alternative approaches to program distribution; (4) network cooperation in scheduling children's programs; (5) public service announcements; (6) ascertainment of children's needs and interests; (7) and effects on children of reductions in advertising.

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[24] Id. at 480-81 and f. 40.

[25] Between 1975 and the reactivation of this proceeding in 1978, the Commission rejected several petitions for reconsideration of the 1974 Policy Statement. FCC, Memorandum Opinion and Order, 55 FCC 2d 691 (1975) (Petition of Action for Children's Television for Rulemaking Looking Toward the Elimination of Sponsorship and Commercial Content in Children's Programing and the Establishment of a Weekly 14-Hour Quota of Children's Television Programs). Memorandum Opinion and Order, 63 FCC 2d 26 (1977) (Reconsideration of the previously mentioned 1975 amendment for rulemaking). Memorandum Opinion and Order, Docket No. 19142, 53 FCC 2d 161 (1973) (Renewal Form Amendments); Memorandum Opinion and Order, 58 FCC 2d 1169 (1975) (Instruction amendments). Memorandum Opinion and Order, 62 FCC 2d 465 (1976) (Petition to Promulgate a Rule Restricting Over-The-Counter Drugs on Television).

As part of this inquiry, the Commission also authorized contract studies to investigate specific topics that were pertinent to the proceeding.

CHAPTER THREE

CHARACTERISTICS OF THE CHILDREN'S TELEVISION MARKET

In the 1974 Policy Statement the Commission set forth guidelines for children's programming, particularly educational and instructional programming, that licensees were expected to meet by voluntary action. The Commission's action reflected a belief that the television industry of its own accord would be able to meet the fundamental needs and interests of the child viewing audience. In this chapter we shall discuss the potential social benefits of television programming that the Commission sought to obtain in 1974.[26] Then we shall review the demographic and cognitive characteristics of children and the features of an advertiser-supported broadcasting system that together determine the amount of television programming for children, particularly the amount of educational and instructional programming. This analysis will examine whether advertiser-supported broadcasters can be expected to provide voluntarily the amount of educational programming that the Commission's 1974 Policy Statement envisioned.

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[26] Many definitions of children's programming are in use, ranging from the informal judgment of program producers ("I know a children's show when I see one"), to syndicated children's program lists developed by ratings services, to the FCC definition that limits children's programs to those originally produced and broadcast primarily for a child audience 12 years old and under. FCC, Memorandum Opinion and Order, 58 FCC 2d 161 (1975) (Renewal Form Amendments); Memorandum Opinion and Order, 58 FCC 2d 1169 (1975) (Instruction Amendments). There exists a large body of off-network syndicated programming, such as The Flintstones, The Brady Bunch, and Hogan's Heroes, that was originally designed for a general prime time audience but in syndication attracts an audience with substantial numbers of children. These programs are often designated as children's programs by the industry, though they do not meet the FCC definition. We should note that our analyses of children's programming offered by licensees were made using both industry and FCC definitions with similar results. See Volume II and Volume IV of this report.

Benefits of Educational Programming for Children

Television has an enormous opportunity to influence children. Most children watch television every day, and most of them watch many hours a day. Recent viewing statistics indicate that on average preschool children watch almost 33 ½ hours of television a week. School-age children watch over twenty-nine hours per week.[27] Children whose families have low socioeconomic status and children who have low academic achievement spend more time watching television than others.[28]

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[27] A.C. Nielsen Co., Child and Teenage Television Viewing (1978), p. 5.

[28] B.S. Greenberg and B. Dewin, Use of the Mass Media by the Urban Poor, (New York: Praeger, 1970); Jack Lyle and H.R. Hoffman, "Children's Use of Television and Other Media," in Television and Social Behavior, Vol. II: Television in Day-to-Day Life: Patterns of Use, ed. E.A. Rubinstein, G.A. Comstock, and J.P. Murray, (Washington, D.C.: U.S. Government Printing Office, 1972), pp. 129-256.

Educational programming appears to provide considerable benefits to children. Research on the effects of Sesame Street provides evidence that preschool children's language and number skills improved markedly as a result of watching the program. The improvement was greater the more frequently the children viewed the program, and occured whether they viewed it in groups with trained instructors or alone at home. Improvement occured among children of all socioeconomic backgrounds.[29] Research on the effects of The Electric Company, a program designed to teach the fundamentals of reading to school-age children, also indicates that well-designed programming can improve academic skills.[30]

The potential benefits of television programming may derive from cultural and artistic programming as well as from strictly instructional material. Many studies show that children acquire attitudes and information from television, particularly on subjects about which they have no first-hand information. Children also imitate behavior they see on television, even without practice or reinforcement.[31] Children who watch Sesame Street also have more favorable attitudes toward school and toward people of other races than those who do not.[32]

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[29] See Gerald S. Lesser, Children and Television: Lessons from Sesame Street, (Random House: New York, 1974). For detailed analysis see S. Ball and G.A. Bogatz, The First Year of Sesame Street: An Evaluation, (Princeton, NJ: Educational Testing Service, 1970); G.A. Bogatz and S. Ball, A Second Year of Sesame Street: A Continuing Evaluation (Volumes I and II; (Princeton, NJ: Educational Testing Service, 1971).

[30] S. Ball and G.A. Bogatz, Reading with Television: An Evaluation of the Electric Company; (Princeton, NJ: Educational Testing Service, 1973); S.Ball et al., Reading with Television: A Followup Evaluation of the Electric Company; (Princeton, NJ: Educational Testing Service, 1974).

Educational programming constitutes an informational resource with great potential benefits for children. Preschool children (ages two to five) in particular may derive large benefits from television because they are at an age to benefit from educational experiences but have relatively few opportunities for either formal learning or for other cultural experiences. They do not go to school and do not read, in general, and thus have fewer alternative sources of information than adults and older children.

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[31] M.L. DeFleur and L.B. DeFleur, "The Relative Contribution of Television as a Learning Source for Children's Occupational Knowledge," American Sociological Review 32, 1967, pp. 777-789; J.R. Dominick and B.S.Greenberg, "Attitudes Toward Violence: The Interaction of Television Exposure, Family Attitudes, and Social Class," in Television and Social Behavior, Vol III: Television and Social Adolescent Aggressiveness, ed. G.A. Comstock and E.A. Rubinstein (Washington, D.C.: U.S. Government Printing Office, 1972), pp. 314-335; E.A. Rubinstein, R.M. Liebert, J.M. Neale, and R.W. Poulos, Assessing Television's Influence on Children's Prosocial Behavior, (Stony Brook, N.Y.: Brookdale International Institute, 1974).

[32] See Ball and Bogatz, The First Year of Sesame Street.

Television may have the greatest benefits for children who do not attend nursery schools or have stimulating home environments.

Education in general, and educational television programming in particular, has beneficial side effects on others besides the producers or consumers of the service. Education's contribution to the democratic process, to lower crime rates, and to improved social cohesion are benefits to society that occur in addition to the benefits to those being educated. Even families without children derive these benefits and would be willing to pay for them. Because the amount that society as a whole would be willing to pay for education is greater than the amount that families with children would pay, a private market would provide less education than society as a whole would like. Most societies have attempted to remedy this deficiency by providing government-supported education.

In a similar fashion, the whole society benefits when children acquire the attitudes and skills that educational television programs appear to teach and are exposed to the richness of our common heritage. Thus even if parents could buy directly the educational programming they might desire for their children, a less-than-optimal amount would be provided because the advantages to the rest of society would not be reflected in the purchase.

Children's Understanding of Television

Many of the potential benefits of television programs for children will be lost if children are unable to understand the content of the programs they see. Recent research applying theories of cognitive development to children's perception of television has shown that children's understanding of the content and format of television varies with age in predictable ways.[34] The research has focused on the cognitive skills that children bring to the processing of information from television. Much of it has dealt with children's attention to television messages, their comprehension of these messages, and their ability to understand the format and structure of television programming.[35]

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[34] A review of the major research on children's comprehension of television programming and advertising was commissioned to provide a background for the discussion and analysis of this issue. See Wartella, Volume V. Additional significant works on this subject are the Surgeon General's Scientific Advisory Committee on Television and Social Behavior, Television and Growing Up: The Impact of Televised Violence, 1972, and Research on the Effects of Television Advertising on Children, (Washington, D.C.: National Science Foundation, 1977).

Children's attention processes have been found to undergo decided developmental changes during the first few years of life. As children grow older, they acquire greater control in focusing their attention in a selective manner. Increasing ability to ignore irrelevant information and focus attention on information that is relevant has been demonstrated in a number of studies on children's attention to television.[36] Studies examining a variety of variables, such as the viewing environment, the content and form of the television message, cycles or patterns of attention, and the comprehensibility of the information presented all conclude that during the preschool years children develop attention strategies that become increasingly similar to those of adults. Children begin to develop television viewing behavior at about age 2½, and by the age of five their behavior towards television begins to approximate the adult style of viewing.

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[35] The seminal theory of cognitive development was formulated by Swiss psychologist Jean Piaget. This theory describes how children think and process information. Piaget posits that children undergo qualitative changes in the way they organize and use information. He has developed a set of cognitive structures to characterize children's thought processes at distinct age-related stages of intellectual development. He posits that these cognitive structures are universal progressions that all children follow in developing from simple to complex mechanisms of thought, and that all young children develop cognitively through the interaction of increasing intellectual abilities and ever broader experiences with the world.

Criticism of Piagetian theory centers on whether cognitive growth unfolds universally in the same manner and at the same rate for all children or whether this developmental pattern is characteristic only of the Western cultures. A second critical issue is whether children can learn a cognitive skill earlier than Piaget's theories suggest. Recent research indicates that in an optimal learning environment, children can develop cognitive skills at an earlier age, and that cognitive skills can, to some extent, be learned and encouraged. Critics also address the research techniques used to assess cognitive ability, noting that children's understanding may be underestimated because they may be incapable of verbalizing concepts which they understand.

Despite these criticisms, Piagetian theories provide the basic structure for research in cognitive development. Even critical research appears only to modify rather than reject the conceptual basis of this model.

For further discussion of these issues, see Wartella, Volume V.

Children's comprehension of television content develops more slowly. Young children's understanding of television appears to be very limited, largely because they bring cognitive abilities and social experiences to the television viewing situation that are less sophisticated than those of adults. Production techniques used for adult programs assume viewer knowledge that young children do not possess. They rely heavily on verbal and visual shortcuts that are

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[36] Id., pp. 2-7.

incomprehensible to young children.[37] For instance, the inferences required to understand motivations, relationships among characters, or time sequences in flashbacks are often beyond the capacities of small children. Children must also develop an ability to distinguish between reality and fantasy in order to understand that a television program is fiction and not real life. Research indicates that an understanding of plots, characters, and audio-visual techniques develops gradually over the elementary-school years. Children as old as eight or nine have difficulty understanding information adults consider essential. Eleven-year-olds understand most television content, but still understand less than teen-agers.[38] Children's poor comprehension of television appears to occur in part because typical television episodes do not adequately present the visual or verbal cues that younger children require.

Young children also have difficulty understanding the programming structure of television, in particular the difference between programs and advertisements. Evidence exists that between the ages of five and eight years children learn that advertising is qualitatively different from programming and serves a different purpose.[39] Awareness of the distinction between programming and advertising proceeds from simple perceptual discrimination (recognition of a commercial) through recognition and articulation of perceptual differences (such as "a commercial is shorter than a program") to a more sophisticated understanding of differences in purpose between programming and advertising.

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[37] Id., pp. 23-37.

[38] Id., pp. 23-37.

The evidence cited above indicates that to be fully understood programming for children must take account of the differences among children of different ages in attention processes, cognitive abilities, and social experiences. Considerable evidence indicates that preschool and school-age children at least must be treated separately.[40] Although entertainment programming attracts and is suitable for a general children's audience, educational programming must be aimed at specific age groups, since to be fully effective it must be based on and must add to the knowledge and skills the children already have.

Advertiser-Supported Broadcasting for Children

The television programming broadcasters actually provide for children depends largely on the incentives created by the advertiser-supported broadcasting system.[41] Most programming is financed directly by broadcasters' advertising revenues and only indirectly by viewers through the purchase of advertised products.[42] Since advertising revenues depend on the size of the audience, the broadcaster will have an incentive to try to attract the largest possible number of viewers to a program. The choice of what programs to offer and how much to spend on programming will depend on the expected effect on the size of the audience. Thus, for instance, during periods of the day when the television audience is relatively small, fewer resources will be devoted to programming than during prime time because less advertising revenue is at stake.

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[39] *Id.*, pp. 38-42.

[40] *Id.*, p. 51. The Commission reached the same conclusion in its 1974 *Policy Statement* based in part on two days of oral arguments presented in 1972. Federal Communicatins Commission, Docket No. 19142, *Public Panel Discussion of Children's Television Programming*, October 2, 1972, pp. 100-102.

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[41] Very few broadcasting systems have followed our model of commercially-supported broadcasting. Many European broadcasting systems are government owned and financed through general revenues or mechanisms such as an annual tax on each television set. Some countries permit limited amounts of advertising on their broadcasting systems and others have created additional, privately-owned and commercially-funded systems modeled in part on our system. The structure and financing of a broadcasting system significantly affects the programming and the advertising, if any, that is broadcast. For a more complete discussion of these issues, see Smith, Volume V.

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[42] The advertiser-supported system provides an effective method for overcoming the "public good" dilemma in television. A public good is a good or service that can be enjoyed by one consumer without diminishing its availability to others, and from which non-paying consumers cannot be excluded. Consumers under these conditions have an incentive not to pay for the good but to become "free riders" on others' purchases. A private producer would either not produce the good at all or would provide less of it than society would like since consumers of the good probably would not pay for it. As a consequence most public goods, such as national defense, lighthouses, and dams, are provided by the government. In the case of television, advertisers' willingness to support programming as a vehicle for attracting viewers eliminates the need for the government to provide broadcasting. It thereby increases diversity of program sources and decentralizes control over information and ideas in society. Although certain demands for programming will not be satisfied, on the whole the advertiser-suported system provides programming satisfies the tastes of a majority of the population and that significantly improves consumer welfare. For further elaboration see Duvall, Volume III.

This profit-maximizing behavior on the part of broadcasters apparently succeeds in serving the program tastes of the broadest segment of society. For instance, if program tastes are measured by the most popular movies, books, and magazines, the advertiser-supported television system appears to perform quite well. Though much repetition and duplication of program types occur, nonetheless television offers fare that is quite similar to what the majority of people are willing to buy directly.

In the case of children's programming, however, the incentives generated by advertiser support may not result in the presentation of the amount and type of programs that parents would be willing to buy for their children. A major reason is that children constitute a small and declining portion of the audience. Their numbers place them at a particular disadvantage when they are divided into preschool and school age groups for purposes of educational programming. In 1972 children aged two through twelve made up 20 percent of the population; by 1978 they had fallen to 17 percent of the population. The total number of children in this age group had fallen by nearly five million over the six-year period.[43] Both industry and Census Bureau forecasts predict a continued decline in the numbers of both preschool and school age children over the next few years.[44]

While children will watch many adult programs, adults are unlikely to watch any but exceptionally well produced children's programs. Programming for children thus may drive away the adult viewers most advertisers prefer.

Children also have less influence than other family members on decisions to buy advertised products.[45] Advertisers of children's products must appeal indirectly to the parents by directing their commercial message to the child, who in turn must convince the parents to purchase advertised products. Even if this indirect strategy is successful the payoff is small, since only a small portion of a household's income is spent on goods that interest children.[46] Preschoolers in particular have no money of their own and are less likely than older children to influence their parents' purchases. Broadcasters can expect greater advertising revenues, and profits, from programming for adults than from programming for school-age children, and can expect even less from programming for preschool children.[47]

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[43] U.S. Department of Commerce, Bureau of the Census, Current Population Reports Series P-25 Nos. 721 and 800.

[44] Nielsen, p. 1. Although census figures show a somewhat larger population in each age category than the Nielsen data, the same downward trend appears. See U.S. Department of Commerce, Bureau of the Census, Population Estimates and Projections: 1978, p.1.

[45] U.S., National Science Foundation, Research on the Effects of Television Advertising on Children: A Review of the Literature and Recommendations for Future Research, p. 148.

The incentives to broadcast for children appear to vary with the size of the local market. Where the market is too small to support more than two or three outlets, broadcasters try to appeal to the largest possible number of adults. Where there are many outlets in the market, it may be more profitable for some stations to program for the tastes of smaller groups than to compete for and further divide the middle-ground adult audience.[48]

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[46] In the Federal Trade Commission's proceeding on children's advertising the presiding officer found that "only a few products, principally heavily sugared foods, toys, and the main items of fast-food chains appear in commercials specifically designed for and directed at children." Presiding Officer's Order No. 78: Certification to the Commission of Recommended Disputed Issues of Fact, in TRR No. 215-60, In the Matter of Children's Advertising, 43 Fed. Reg. 17967(1978) at 18.

47 Another failing of the advertiser-supported system is its inability to take account of strong preferences. While in other markets consumers can demonstrate their intensity of preference by their dollar votes, broadcasting only registers one vote per viewer since advertisers are interested only in the presence or absence of viewers. To the extent that families cannot demonstrate the intensity of their demand for children's programming, the market will fail to provide it in adequate amounts.

In practice, in the smaller markets all advertiser-supported stations are network affiliated. They present, for the most part, programming designed by the networks to draw the largest national audience. Larger markets contain large enough groups with specialized tastes to support independent stations who compete through counterprogramming, leaving the majority audience to the networks and directing their programming to the audiences the networks miss. Thus the tastes of relatively small groups, including children and ethnic minorities, tend to be served better in larger markets.

Studies of the radio market confirm that specialized and minority programming abounds in markets with numerous stations.

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[48] For example, if children between the ages of two and twelve make up 17 percent of a given market, and if every advertiser-supported broadcaster can attract an equal share of the total viewing audience, then each market must have six stations before general entertainment programming for children will produce a larger audience for any broadcaster than programming for the general adult audience. Since advertisers and broadcasters place greater value on one adult viewer than one child viewer, more stations may be required before programming for children is economically attractive than would be necessary for an adult audience of the same size. The airing of some children's educational programming rather than entertainment programming alone may develop only in still larger markets.

Informational programming and programming for a wide variety of ethnic and linguistic groups are provided by dozens of radio stations. As we shall see, however, the potential for diversity in television markets at present is not comparable to the diversity found in radio markets, in part because greater production and distribution costs in television make larger audiences necessary for profitable operation.

Consequences for Children's Programming

Since advertiser support creates different incentives for offering children's programming than would be created by direct purchase by families, we may expect different programming to result. Among the effects we might expect are the following:

First, less children's programming will be available on advertiser-supported stations than would otherwise be expected. Only a few advertisers (toy manufacturers and the like) will be interested in sponsoring children's programs, and broadcasters will find it more profitable to program for adult audiences who provide a market for a wide variety of advertised products.

Broadcasters can be expected to schedule children's programming either when children are expected to make up a large proportion of the television audience, or when the adult audience to be lost is small. In some cases such scheduling will suit everyone's preferences; in others it will merely place children's shows at times, such as 6:00 a.m., when very few adults (or children) watch television. Children's programming is also likely to be pre-empted by other more lucrative programs, either on a one-time basis or permanently as new market opportunities arise.

Broadcasters will also be willing to spend relatively little money on programming for children, just as they are unwilling to spend large amounts on late-night programs with small potential audiences. Since advertisers place little value on the child audience, the payoff for trying to increase that audience through more expensive programming will be small. Exceptions may occur in the rare cases when high-quality children's programs attract an adult audience.

Children's programming will be designed to attract a broad child audience rather than specific age subgroups, since age-specific programming would further divide an already small audience. Whatever age-specific programming occurs will probably be addressed to the school age audience, since it is larger than the preschool audience and since school age children are more likely to have money to spend and to influence adults' purchasing decisions.

Children's programming will consist largely of purely entertainment programs rather than informational or educational programming because entertainment programs attract larger, less age-specific audiences and are less expensive to produce. The experience of the Children's Television Workshop, the producers of Sesame Street and The Electric Company, shows that the research and development required to create high-quality educational programming is time-consuming and expensive.[49] Production costs for quality educational programming are also very high.[50]

Independent stations will probably provide more programming for children and schedule it at more diverse times than network affiliates do. We expect this result because, as noted above, independent stations follow a strategy of programming for specialized audiences missed by the network affiliates. Since independents exist primarily in markets large enough to support other stations in addition to three network affiliates, we expect children's programming to be most prevalent in the largest markets.

Patterns of Programming for Children

Examination of licensees' broadcasting practices bears out our expectations concerning television programming for children. A study of the amount and scheduling of children's television programs in a sample of fifty-two markets, commissioned to examine broadcasters' compliance with the 1974 Policy Statement, shows that the total quantity of programming for children is small. Only 8 percent of all programming by network affiliates and 11 percent of programming by independent stations is devoted to children (assuming a nineteen-hour broadcasting day). The total hours per week of children's programs increased by 7 percent between 1973-74 and 1977-78, but despite the 1974 Policy Statement the time devoted to children's programs by network affiliates remained constant. The increase in children's programming was entirely due to a 36 percent increase in independent stations' programming for children.[51]

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[49] Between 10 and 15 percent of CTW's initial two-year budget of $8 million was allocated for research. Gerald Lesser, Children and Television: Lessons from Sesame Street (New York: Random House, 1974), p. 132. Less research is necessary after the start-up costs of program creation and production have passed.

[50] ABC's After-School Specials are estimated to cost about $250,000 per show. Rudick, Volume V, p. 19.

Broadcasters tend to schedule children's programs at hours when more desirable viewers are unavailable. An analysis of composite week programming for the 1973-74 season and the 1977-78 season indicates that in both seasons network children's programs were most frequently scheduled between sign-on and 9:00 a.m.[52] Independent stations scheduled children's programs with most frequency between noon and 4:30 p.m., followed by the period between sign-on and 9:00 a.m. Network affiliates scheduled over 60 percent of children's programs on weekends, presenting very little on weekdays, Independents, on the other hand, scheduled only 12 percent of children's programs on weekends.

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[51] For a complete discussion of the amount of time devoted to children's programs, see Abel, Volume IV.

[52] For further analysis of scheduling practices, see Volume II.

The scheduling patterns of the network affiliates serve children poorly because they fail to reflect children's viewing patterns. Saturday morning, when networks air the bulk of their children's program schedule, represents only 8 percent of children's total weekly viewing. Preschool and school-age children do 44 and 58 percent, respectively, of their weekly television viewing after 4:30 p.m. when almost no children's programs are shown.[53] As a result, children spend more hours per day watching adult programs than children's programs. In 1977 the children's program with the highest child viewership, the Scooby Doo-Dynomutt Show, was seen by only half as many children as Happy Days, an adult program.[54]

Pre-emption of children's shows by adult programs occurs frequently. In informal discussion, programmers have cited frequent pre-emptions of children's programs in the Pacific time zone by sports events that appeal to a broader audience. The children's programs that used to appear on Sunday mornings have largely been displaced by religious programs that broadcasters are paid to present. Some programmers have expressed concern that Saturday morning children's programs may in the future be displaced with increasing frequency by programming that attracts a more desirable audience for advertisers.

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[53] Nielsen, p. 5.

[54] Arbitron Television, Children's Share of Total Audience for Top Fifty Programs Ranked by Number of Children and Percentage of Children (February 1977).

An increasing percentage of children's programming derived from syndicated sources, much of which is relatively inexpensive off-network material, between 1973-74 and 1977-78 indicates an unwillingness to devote more than minimal resources to children's programming. Programming from syndicated sources increased by 36 percent to make up 41 percent of all program time for children. At the same time, network-originated programming decreased by 5 percent.[55] Independent stations have increased the amount of children's programming by showing more syndicated material; network-affiliated stations have substituted syndicated for network-originated programs. The syndicated shows consist largely of reruns of network programs--in 1978, 41 percent were former network programs--and many of them were originally produced for adults but are considered to appeal to children.[56] A consequence has been a decline in the amount of original material on the air for children.

Broadcasters air very little educational or age-specific programming for children. A staff study of stations in fifty-two markets showed that in 1977-78 stations aired an average of 2.6 hours per week of instructional programs for children.[57] CBS' Captain Kangaroo is the only available network preschool educational program. A study conducted by Romper Room Enterprises found that independent stations provide considerably more preschool instructional programming than network affiliates.[58]

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[55] Abel, Volume IV, pp. 12-14.

[56] Unpublished data collected by Abel.

In most of the respects noted above, independent stations appear to serve children better than network affiliates. They provide more programming for children, they schedule it at more varied hours, and some commentators suggest that they are more likely to provide preschool educational programming.[59] Independent stations in the top fifty markets were also entirely responsible for the increase in time per station devoted to programming for children between 1973-74 and 1977-78. We should note, however, that networks remain the source of almost all new children's programming, with the exception of a small amount of first-run syndicated programming.

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[57] This does not include local programs or short educational inserts search as Schoolhouse Rock. See Fontes, Volume III.

[58] A recent survey of preschool educational programming conducted by Romper Room Enterprises shows that Captain Kangaroo is aired for one hour each weekday on virtually all CBS affiliates in the top fifty markets. NBC offers one instructional program on weekends for school-age children; ABC has two. All three networks in addition provide some short educational segments for school-age children, such as Metric Marvels, In the News, and Schoolhouse Rock, but these never total more than twenty-four minutes per week. Comments of Romper Room Enterprises Docket No. 19142 pp. 17-19, submitted February 12, 1979.

[59] Id.

Evidence collected in the compliance study indicates that the very largest markets provide most children's programming. In Los Angeles, for instance, which has thirteen advertiser-supported stations, nearly 150 hours per week of children's programming are available. Two independent stations that specialize in children's programs broadcast over 40 percent of the total. While we have no direct evidence, we may note that the increase in children's programming since 1973 may be associated with an increase in the number of stations per market. The increase occurred entirely in the top 50 markets. Of the markets sampled in this group in the compliance study the largest three had acquired four new stations among them between 1973 and 1979.[60]

Programming for children appears to be most available in markets containing independent stations, most of which are large cities. This pattern suggests that increasing the number of outlets in smaller markets holds considerable promise of increasing the amount of television programming available for children.

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[60] Television Factbook, Stations Volume, No. 48, (Washington: Television Digest, Inc., 1979) and unpublished data collected by Abel.

Demand for Children's Programming

We have seen that the small numbers of children and their lack of purchasing power make them a poor audience for advertisers and provide broadcasters with very little incentive to program for them, particularly in markets with few stations. We have also seen that broadcasters respond to these incentives and give very low priority to children's programming, especially educational programming, which constituted the Commission's major programming concern.

Recent evidence from cable television indicates that parents in fact demand and are willing to buy more educational programming for their children than the advertiser-supported stations present. In the last year three different cable program packages including much material for children have been initiated. Home Box Office's Take 2, a pay channel consisting of general family entertainment, offers "Merry-Go-Round", a series of programs for children, and a great deal of other programming suitable for children. U.A-Columbia Cablevision's Calliope provides an hour of shorts for children, many of them award-winning, three days a week. Nickelodeon, produced by Warner Cable, provides an entire channel of programs for children, some aimed at each age group and much of it educational. For preschool children Nickelodeon offers 125 hours of varied violence-free material with no advertising. For older children it has Encyclopedia Britannica films and other children's documentary films, in addition to old movies and read-along "video comic books." For teenagers Nickelodeon provides "America goes Bananaz," with disco music and rap sessions on teenage topics. Cable television thus appears to provide a larger quantity and wider variety of children's programs than are available on commercial television.[61]

Take 2 is a for-pay channel; Calliope and Nickelodeon are offered to cable systems for a small fee per cable-system subscriber. Both Calliope and Nickelodeon have been taken by a number of cable systems, some having only twelve channels, indicating considerable belief in demand for children's television. Cable systems and program packagers clearly would not offer such programs if they did not expect demand for them to be great enough to increase the cable systems' profits.

Conclusions

Television has great potential value to children both as a source of information about the world and as a medium for teaching specific skills. But the demographic and cognitive characteristics of the child audience, in combination with the economic incentives created by the advertiser-supported broadcasting system, result in the failure of the market to provide a socially optimal level and type of television programming for children.

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[61] See Rudick, Volume V, Appendix C.

In a free-enterprise economy, producers will serve societal goals only if consumers can directly express their preferences through purchases in the marketplace. Since advertisers rather than viewers pay for television programming, broadcasters program to maximize the adult audience rather than to serve the needs of smaller groups, particularly those likely to have little effect on product sales. The limited number of broadcasting outlets in virtually every market places constraints upon the opportunities for program diversity and prevents the development of programming to meet strong preferences of small audiences. While segments of the population are well served by the broadcasting system, the children's market is dramatically underserved. We believe that there is considerable demand for and benefit to society from age-specific educational programming, but that this demand goes unfulfilled and the benefit goes unrealized due to children's limited appeal to the advertiser and the limited number of broadcast outlets. In short, we believe that what economists call a market failure exists in children's television programming.

In the context of this analysis, it is clear that the market incentives of the broadcasting industry as it is structured today run counter to the policy guidelines and expectations that the

Commission created in its 1974 Policy Statement. Without some change in the broadcast market only limited changes can be expected either in the availability and scheduling of nonentertainment and age-specific children's programs or in the overall amount of programming available to children. Yet we believe that the responsibility of licensees to program for all segments of the audience remains undiminished; it is our view that this specific market failure provides an instance in which government intervention may yield significant returns to society.

CHAPTER FOUR

POLICY OPTIONS FOR CHILDREN'S PROGRAMMING

The preceding discussion provides evidence that the existing market supplies less television for children, and in particular less educational and instructional programming, than society would like and would be willing to pay for. Several policy options are available to alleviate this market failure. Some of these options would alter the incentives for provision of children's programming on the existing advertiser-supported television system; other options would look beyond that system to find other techniques for providing quality video fare for children. This chapter discusses the advantages and disadvantages of options of both kinds.

Options that Affect the Advertiser-Supported Broadcasting System

Voluntary programming guidelines. The establishment of more specific, but still voluntary, program guidelines constitutes the mildest form of government intervention that might be used to improve children's programming. It imposes few costs: the administrative burden is small and, because the guidelines are not mandatory, no restrictions are imposed on the industry that would result in inefficient or economically harmful behavior. On the other hand, benefits are also likely to be small, since the industry has no incentive beyond avoiding unfavorable publicity, among the public at large and at the FCC, to alter its practices in a positive direction.

Our study of the broadcasting industry's compliance with the 1974 Policy Statement demonstrates the ineffectiveness of voluntary guidelines for children's programming. Continued reliance on voluntary industry action is unlikely to have any significant effect on children's television programming.

Specific programming rules. A stronger alternative is mandatory rules concerning the amount, type, and scheduling of children's programs. Such rules might require broadcasters to present a minimum number of hours of programming for children and might require that it be scheduled in a time period when children would be likely to watch it. While mandatory rules might require educational rather than purely entertainment programming, further specification of program content would probably exceed the FCC's statutory and constitutional authority.[62]

The benefit to children from mandatory rules will depend in part upon how the rules affect the advertising revenues of broadcasters. A programming rule that required broadcasters to devote a minimum amount of time to children's programs in many cases will increase the total quantity of children's programming. But the size of the child audience will probably have relatively little effect on advertising revenues, and consequently broadcasters will be unlikely to allocate more than minimal resources to FCC-mandated programs. Only if the size of child audiences increases greatly with additional expenditures on mandated programming, or if high-quality children's programming also draws adult audiences, or if the programs can be produced relatively inexpensively, will broadcasters be likely to present high-quality educational programming. Broadcasters will be less likely to devote resources to children's programs if they are allowed to present them during graveyard hours when the audience will be small.

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[62] For discussion of the legal issues, see the Appendix.

Broadcasters will also probably comply with the letter rather than the spirit of the rules and offer programming with as much entertainment and as little educational value as possible if audience size is highly responsive to entertainment characteristics. We can expect major changes in broadcaster behavior only if broadcasters' incentives change due to an alteration of the overall structure of the industry.

Increasing the number of broadcast outlets. As we have seen, the tendency of broadcast stations to program for the lowest common denominator of audience tastes diminishes as the number of stations in a market increases.[63] If, for example, in a market with four broadcast stations, 30 percent of the total audience prefers a specialized program to routine entertainment fare, it will be advantageous for one of the four stations to present the specialized programs, since it will then achieve a 30 percent market share rather than the 25 percent share it would capture through duplicate programming. Actions that allow more stations to enter and operate successfully within given markets can thus be expected to increase the diversity of available programming.

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[63] See for example In the Matter of Relaxation of Regulations Governing Radio Stations in Selected Large Markets with Respect to Ascertainment of Community Programs, Non-Entertainment Programming, and Commercial Practices, FCC 79-219.

Since children frequently constitute a substantial portion of the viewing audience, particularly during non-prime-time hours, some stations in large markets can profitably direct programming toward children. Evidence collected in the compliance studies shows that children's programing is more available in the top fifty markets than in the rest of the country, and is provided most frequently in the very largest markets. Independent stations, most of which are located in the top fifty markets, offer children's programs almost 50 percent more frequently than do network affiliates.[64] Independent stations also schedule children's programming at times other than Saturday morning more often than network affiliates. Clearly the behavior of the independents attests to the demand for more children's programming than is provided by the networks, and to the profitability of supplying it in large markets.

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[64] See Abel, Volume IV, pp. 17, 20.

The behavior of radio stations, which offer a multiplicity of programs for ethnic and linguistic minorities and other specialized groups, provides further evidence of the likelihood of increased diversity in markets with many outlets.[65] Television broadcasting, however, faces economic and technological constraints that prevent it, at least in the near term, from achieving the proliferation of outlets found in radio.

A major economic constraint on the number of television stations appears to be the cost of producing and distributing programs. Because these costs are higher than in radio, television stations require larger audiences than radio stations for profitable operation.

Local radio stations can easily produce programs of equal quality to network offerings. Local stations are particularly proficient in providing music, the backbone of radio programming. By contrast, local television stations cannot afford the talent and overhead required to produce the kind of programming offered by the networks, which draw revenues from a national audience. Independent television stations compete in offering entertainment and dramatic fare primarily through purchase of syndicated former network series and old movies, which are less expensive to produce than new programs.

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[65] For much more detail about the radio medium today see In the Matter of Relaxation of Regulations Governing Radio Stations in Selected Large Markets with Respect to Ascertainment of Community Programs, Non-Entertainment Programming, and Commercial Practices, FCC 79-219.

In radio broadcasting methods of distribution that are much cheaper than network distribution are available. Records and aural tapes are very inexpensive to produce and can be duplicated for distribution directly to radio stations more cheaply than the same programming can be fed across a network of telephone connections. Only when the nature of the radio programming requires timely delivery to stations, as is the case with news and live sports, does radio networking become cost-effective. In television, however, particularly if a large group of stations is involved, networking still constitutes the least-cost program distribution method.

Technological constraints also prevent television from providing as many outlets per market as radio. Given present Commission rules to prevent frequency interference, no more of the VHF spectrum is available for new stations in any but the smallest markets. UHF signals are not yet comparable in quality to VHF, but even so UHF allocations are fully assigned in some markets.

As a consequence of the higher costs of production and distribution of programming, and of the limits on the number of outlets, television remains largely a national medium while radio has become primarily local in its orientation. In 1976, 74 percent of advertising on radio was of local origin, while in 1978 only 25 percent of television advertising was local.[66] While network programming is available to a radio network affiliate less than 20 percent of the broadcast day, a television affiliate has network programming available, on the average, 64 percent of the broadcast day.[67] Radio signals received from distant markets are unlikely to be identical to programming on the local station, while distant television signals, particularly network signals, are very likely to be precisely the same. Television programming and advertising largely aim for national mass markets and give little weight to tastes of relatively small groups.

Technological changes in program distribution methods and interference protection techniques may reduce the dependence of television stations on the networks. In the future low-cost video disc systems may offer a cheaper method of program delivery both to broadcast stations and to home viewers. Whether video discs become the method of future program delivery depends in part upon how their costs compare with the least costly method of networking, which seems likely in future to be by satellite. If video discs become the least-cost method of program distribution to stations, local stations will be able to offer current programming at lower cost. The diversity of broadcast programming will be likely to increase greatly, and the national character of television will diminish.

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[66] Data are from Broadcasting, July 30, 1979, p. 40 and The Mass Media: Aspen Institute Guide to the Communications Industry Trends, (Praeger, 1978), p. 129.

[67] Data for television are from the ABC submission in Docket 21049 for all three networks for March, 1977. Data for radio are based on submissions in Docket 20721 for CBS, NBC and ABC. Data for both radio and television are based on a 140-hour broadcast week.

The effective number of stations in a market may be increased by technical improvements making UHF signals more comparable to VHF. More experience with interference protection techniques may also make it possible to increase the number of VHF stations. Cable television offers an additional possibility for expansion in the number of channels and the variety of programming available. Actions by the FCC that encourage additional signals in a market by any of these means will increase the probability of a large quantity and variety of children's programming.

None of these alternative methods of program distribution and transmission will alter the much higher costs of producing television programming than radio programming. These production costs are likely to limit any movement of television toward becoming as local a medium as radio.

Government funding. Within the advertiser-supported broadcasting system, one of the few alternatives that shows promise of improving the quality, as well as the quantity, of children's programming is reducing the cost of such programming to the broadcaster.[68] Government funding of the production of educational programs, which could be made available for advertiser-supported station use, would lower the cost to the broadcaster of airing quality fare. Broadcasters would then be able to show the programs at a profit to smaller audiences.

Government moneys have financed a large number of educational programs for children. These have been made available primarily on public television and only to a lesser extent on commercial television.[69] No unified policy exists at the federal level to assure long-term, continued funding of children's television programs. Instead, each agency determines independently whether its goals will be enhanced by the use and support of television.[70]

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[68] High-quality educational programming can be expensive to produce. The initial two-year budget for the research, development and production of Sesame Street was $8 million. Gerald Lesser, Children and Television: Lessons from Sesame Street, (New York: Random House, 1974), p. 132.

[69] Because of concerns about federal control of program content, most federal funding is structured so that the funding agency has no editorial authority over the program. In fact, PBS underwriting guidelines prohibit direct government intervention in program content on public television.

Government Support has occurred as both one-time and on-going funding commitments. One-time commitments have been made by diverse agencies such as the National Science Foundation, the National Endowment for the Arts, and HEW's Bureau of the Handicapped. The largest of the one-time commitments is a $3.5 million grant from the National Science Foundation to Children's Television Workshop (CTW) for a science series.

On-going funding has provided the bulk of governmental support for children's television and has come primarily from HEW's Office of Education (OE). OE has funded children's programming through the Special Projects Act (formerly the Cooperative Research Act), and the Emergency School Aid Act (ESAA).

The Special Projects Act has provided funding for CTW, producers of Sesame Street and The Electric Company. Since 1969 CTW has received approximately $43 million from this source.[71]

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[70] Legislation has recently been introduced in the Senate that would create a National Endowment for Children's Television to provide support for production of children's programs of artistic or educational significance. U.S. Congress, Senate, A Bill to Improve the Quality of Children's Lives Through the Creation of a National Endowment for Children's Television, S. 1823, 96th Congress, 1st sess., 1979.

The Emergency School Aid Act provides funds for the development and production of children's programs for in-home use to help overcome educational handicaps and relieve segregation and minority-group isolation. ESAA provides the largest single source of funds for children's television. Since its establishment in 1972 over $52 million has been spent on seventeen completed series and eleven currently in production.[72] For Fiscal Year 1980, OE has allocated almost $10 million in additional funds.

Viewership of ESAA programs, however, remains limited. PBS stations have been the primary users of ESAA programs, and only one-third of them carry any ESAA programs distributed by PBS. To promote broadcasting of ESAA programs by advertiser-supported stations, OE has felt the need to establish a syndication organization, Television for All Children (TVAC).

The limited carriage of ESAA programs by public and advertiser-supported stations may result from controversial themes and uneven technical quality.[73] Equally important, however, may be the clause in the Act that prohibits programs produced under the Act from being "transmitted under commercial sponsorship."[74] A broadcaster who wants to air an ESAA-funded children's program can receive the program free from HEW but must forego any opportunity to sell advertising with it. Whatever profits he might have made with other programming will be lost.

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[71] See Rudick, Volume V, pp. 29-30.

[72] See Id., Appendix B for a list of ESAA funded programs.

[73] For more detail see Rudick, Volume V, p. 32.

If the Act were amended to remove or reduce the ban on advertising, many stations might find the profitability of commercial programs relative to ESAA-funded programs altered in favor of the ESAA programs. The restriction on commercial sponsorship was enacted to prevent excessive public subsidies for advertiser-supported broadcasters. But several alternative ways of limiting that subsidy, including limiting the allowable number of commercial spots or requiring advertisements to be matched by public service announcements on topics appropriate for children, might still limit the extent of the public subsidy yet encourage wider use of the programs.

Over time the federal commitment to children's broadcasting changes as the priorities of the agencies and, indeed, as national priorities change. For example, in recent years funding for CTW has been considerably reduced. Changes are being planned in ESAA regulations that would, among other things, place emphasis on in-school use and thus reduce the amount of programming available for at-home use on public or commercial television. While a strong commitment to children's programming has been present during the past decade, these changes illustrate that no unified policy exists within the federal government to assure the continued development of educational programs for children.

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[74] Emergency School Aid Act of 1978, Pub. L. No. 89-10, Title VI, § 611, as added Pub. L. No. 95-561, Title VI, § 601 (a), Nov. 1, 1978, 92 Stat. 2264; 20 U.S.C.A. § 3201 (a)(2).

Options that Involve Alternatives to the Advertiser-Supported System

Advertiser-supported broadcasting may not satisfy viewers' demands for diverse programming even with an unlimited number of outlets and with subsidies for program production. We have previously seen that advertisers are only interested in audiences that are likely to buy their products, that for a given audience size broadcasters will choose cheap programming over expensive programming, and that given the cost of programming broadcasters will attempt to reach larger rather than smaller audiences. Children will lose out on all counts. Original educational children's programming is expensive to produce, and advertiser-supported broadcasters may not offer it voluntarily with any frequency. So we must also look to alternative delivery systems, including public broadcasting and direct pay systems, to provide the type of children's programming currently in short supply.

Public broadcasting. The public broadcasting system--both radio and television--was created to provide higher quality programming than was available from commercial broadcasters.[75] Congress stated that one of its functions was

> to encourage non-commercial educational radio and television broadcast programming that will be responsive to the interests of people both in particular localities and throughout the United States, and which will constitute an expression of diversity and excellence.[76]

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[75] The Corporation for Public Broadcasting (CPB) was created by Congress to provide system leadership, programming responsibility (although CPB does not itself do production) and financial accountability. CPB is responsible for directing federal funds to local stations in the form of unrestricted community service grants. In addition, it has a limited programming budget that can be used to finance national programming.

Public Broadcasting Service (PBS) is responsible for station interconnection and distribution of national programming. Local stations, currently 280, are the core of the system and are responsible for the production of programming that is distributed by PBS to other member stations in the system. Stations pool their programming budgets in the Station Program Cooperative (SPC) and vote, by a complex mechanism, on which programs they will provide with financial support and will therefore have the right to air.

An additional component of the public television system is the regional networks. They were created to permit stations in a geographic area to acquire, produce, and distribute instructional material or programs of regional interest.

National Public Radio (NPR) was created in 1970 by CPB to interconnect public radio stations. Unlike PBS, NPR is empowered to produce as well as distribute programming. NPR stations receive annual grants from CPB for programming, interconnection and other activities as well as funds from their sponsoring organizations (predominantly educational institutions) and from the listening audience.

[76] Public Broadcasting Act of 1967, § 369(a)(4), P.L. 90-129, 81, stat. 365, (1967).

In the past public television has provided children's programs of the highest caliber.[77] During the last decade, public television's children's lineup—Mr. Rogers' Neighborhood, Sesame Street, Zoom and The Electric Company—has exploited entertainment formats to produce outstanding educational programs. Children's programs in fact deserve much of the credit for the excellent reputation of public television programming.

Recently, however, very little new children's programming has been produced for public television either for preschoolers or older children. The programs on which public television made its reputation were all created five to ten years ago, and most of the material shown now consists of reruns of these programs.

Responsibility for the limited new production of children's programs may lie with the funding structure of public broadcasting. Funds for public broadcasting come from a wide variety of sources, including government, corporations, foundations, universities, school boards, and private individuals.[78] While the diversity of funding sources to some extent protects public broadcasting's editorial integrity and independence, the system remains sensitive to the interests of those larger and more affluent groups that provide public broadcasting with its financial support.[79] Most of these funding organizations currently appear to have little incentive to support children's programs.

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[77] This discussion focuses solely on public television. Non- commercial radio, still in its infancy, has made no concerted effort to date to reach the child audience. For a discussion of National Public Radio see Rudick, Volume V, pp. 48-55.

Foundations such as the Ford Foundation and the Markle Foundation have contributed several million dollars for PBS children's programs in the past but by 1978 provided only $300,000. In some cases the foundation intended only to help establish high-quality children's programming and then to pass on responsibility to other organizations. In other cases reduced support may reflect lessened national concern for children from disadvantaged racial and ethnic groups, who were believed to receive particular benefit from educational programs.[80] Thus funding from foundations, like government funding, appears to be subject to changing priorities and perceptions of need.

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[78] In 1977, of the $482 million total income of the public broadcasting system only about $100 million was fully discretionary. Of the $67 million of funding for the National Television Program Service, federal agencies provided 29 percent, corporations 22 percent, foundations 10 percent, local stations 22 percent, CPB 7 percent, and other sources 11 percent. Thus over 70 percent of the funding for the 1977 schedule was provided by sources outside the public broadcasting system. A Public Trust: The Report of the Carnegie Commission on the Future of Public Broadcasting, (New York: Bantam Books, 1979), pp. 103-105.

[79] For a comprehensive discussion of this issue, see Id., pp. 93-149.

Many of the characteristics of the children's television market that make advertisers reluctant to support children's broadcasting also affect the funding of children's programs on public television. The audience is small, the programs are expensive, and the supporting organization receives little recognition from adults. These limitations affect funding priorities both within and outside the public broadcasting system.

Corporate decisions to support public broadcasting often rest on whether the support will enhance the company's public image rather than whether the program has social value. The adults that corporations seek to impress seldom watch children's programs, so the public-relations value of their support is largely lost. Underwriting children's programs is, from this perspective, of little value to a corporation. As a consequence, in Fiscal Year 1978 only $1.8 million or 2 percent of corporations' total contributions to public broadcasting were for children's programming.[81]

Similar incentives influence the decisions of local stations, which have a major influence on what programs are produced in the PBS system. PBS has no programming funds of its own, but relies on the Station Program Cooperative (SPC), a mechanism by which station programming budgets are pooled and stations vote for programs that they want to purchase and support. Proposals for children's programs must compete for funds against public affairs series, dramatic series, and other programs designed for an adult audience.

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[80] See Rudick, Volume V, pp. 20-23.

[81] Id., pp. 24-25.

Local stations depend on contributions from viewers for a significant portion of their revenue. To receive federal funds, stations must raise two dollars locally for every matching federal dollar they receive. Consequently, local stations must present programs that will appeal to the affluent adults most likely to contribute to local fundraising efforts. In addition, local contributions are made to the station as a whole and cannot be earmarked for specific program types, so that viewers with strong preferences for children's programs have no effective means to make them felt. Thus fundraising by local stations also tends to relegate children to a low-priority status.

Because the stations have limited programming budgets, they also tend to be conservative in selecting programs, choosing those with a proven track record and relying on reruns of old programs rather than risking money on new, untested concepts. After voting for these expensive programs, many PBS stations cannot afford to purchase any other new programming for children. Thus the funding mechanisms in public broadcasting tend to discourage innovative program production.

In addition the success of CTW's programs has reduced the willingness of local stations to produce their own children's programs. Local stations and producers believe that they can attract neither the funding nor the talent to meet the standards that Sesame Street and The Electric Company have established.

A few stations have tried to develop children's programs locally with the expectation of distributing the program throughout the PBS system. Because of the conservative voting patterns of stations in the SPC and the lack of outside funding, however, these efforts have generally proved unsuccessful.[82] As a result, in 1976 on average under eight hours of a PBS station's annual program schedule consisted of locally-produced children's programs. In the same year, CTW accounted for about 18 percent of all program hours aired on PBS.[83]

As a consequence of the low priority given to production of children's programs, no major new children's programs have been introduced into the PBS system since 1972. The PBS children's schedule relies heavily on the old successful programs, which are run several times a day and are repeated throughout the broadcast season.[84]

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[82] Id., p. 9.

[83] Id., pp. 13-14.

Rerunning programs may be justified to offset high production costs. A new child audience is continually appearing, and the youngest viewers are always seeing the programs for the first time. In addition, children like and profit from repetition. Programs become dated, however, and excessive use of the same material appears to result in a diminished audience.[85]

Children's programming on PBS suffers from changing priorities of government and foundation underwriters. In addition, corporations and local stations face a set of incentives similar to those in the advertiser-supported system, which make the rewards for supporting programs depend on their appeal to an affluent adult audience. Changes in the funding structure of PBS that either guarantee that federal funds will be available for children's programming or at least make funding independent of programming decisions must occur before the bias toward adult programming can be eliminated.

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[84] The PBS system does have plans for some new planning for children. CPB has recently announced a policy to make children's programs a priority within the system. It has made a major financial commitment to new programming for children and has begun planning for a major new production for older children. In addition, Children's Television Workshop is developing a new children's series on science for eight-to-twelve-year-olds, which is scheduled to premiere in 1980. See Id., pp. 16-18.

[85] Id., p. 16.

Even if the funding problems were corrected, however, public television by itself could not be counted upon as the sole means of providing for children's needs since it is not available in many communities. Children's programming on advertiser-supported stations still appear necessary to serve the entire child audience.

For-pay programming options. The most serious failings of the advertiser-supported broadcasting system in presenting children's programming could in principle be remedied by a system in which viewers pay for the programs they see. The fact that children are of limited appeal to advertisers, but require high-quality age-specific programming, would not reduce the programming available to them if their parents were able to pay directly for the programming.

Several alternative forms of viewer-paid program delivery are currently becoming available or will be available in the near future. Most prevalent now is cable television, which offers a basic service that makes available a large number of advertiser-supported channels and some channels programmed specifically for cable. Subscribers also may have the option of paying an additional monthly fee for one or more channels presenting material designed solely for cable, much of it originally produced and shown without advertising.

Cable television already offers three different program packages for children, including a complete channel for children. Two of the three are part of a basic cable package; the third is a for-pay channel.[86] As we noted in Chapter 3, much of the material presented is quite different from that offered by the networks and has a higher educational content.

In addition to cable, subscription television (STV) offers programming for pay broadcast over the air rather than delivered by cable. Four of the six STV stations present children's movies, including Walt Disney productions not shown on the networks.[87]

Other, fundamentally-new technologies, including satellite-to-home broadcasting and video recording systems, also provide possibilities for viewer-purchased programming. Children provide a natural market for video discs and cassettes since they like repetition. They read their favorite books and listen to records repeatedly, and will probably do the same with video discs and cassettes. Over the next five to ten years disc and cassette programs for children will probably consist of programs from other media adapted for video technology. Because of the relatively small children's market, original programming for at-home viewing will probably develop more slowly than similar products for adult audiences.

Cable television currently reaches about 20 percent of the television audience, and is not yet available in most communities. The other delivery methods are still in their infancy. Pay television has not yet affected the position of advertiser-supported over-the-air broadcasting as the main source of television for children. Thus advertiser-supported broadcasting must continue to bear the responsibility for providing suitable programming for children.

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[86] Id., pp. 59-62.

[87] See Notice of Inquiry and Proposed Rulemaking in Docket No. 21502. 79-

Most forecasters expect that within a very few years these pay options will revolutionize the structure of the television market. When fully established, they will provide a very large choice of programming to viewers willing to buy it, probably including high-quality children's progams. Government actions that encourage these alternatives to advertiser-supported broadcasting will speed the arrival of more and higher-quality programming for children.

A pay broadcast system can serve small audiences with strong and unusual preferences as the advertiser-supported system cannot. The disadvantage children now suffer from being too small an audience to attract the attention of the networks should be almost entirely eliminated by pay television.

The pay options fail, however, to provide the potential social benefits that flow from the fact that television signals, once broadcast, can be received by anyone without reducing their enjoyment by other consumers. Those who do not pay for the service are excluded from it, even though it could be provided to them at no cost.

The possibility of providing a good to additional consumers at no cost is often used as an argument for government provision of the good since private producers would insist on charging for it and denying it to those who did not pay, and the full potential benefits of producing it would not be realized.

Pay television would not, however, significantly reduce social welfare if the total supply of programming were not impaired very much by exclusion of those unwilling or unable to pay for it. The advertiser-supported broadcasting system does allow those who do not pay for programming to receive it at no cost (beyond the purchase of a television set) and thus provides major social benefits. So far no evidence has appeared that development of a pay television system will reduce the availability of advertiser-supported programming, and most industry observers do not expect current broadcasters to be threatened.

Further, the low distribution cost of many informational commodities, e.g., newspapers, records, films, and books, has never warranted government intervention in the market. Freedom of the press, and the attendant decentralization of control over information and ideas in society, would be threatened by government provision of informational commodities. The maintenance of freedom of the press has been viewed as outweighing a considerable loss in private consumer welfare. The private market is also more efficient than the government in responding to consumer preferences as to type, content, and format of information.

Pay television also fails to account for the gains to the rest of society from children's educational television. Because the gains to society from educational television exceed (and may far exceed) the private gains to children and their families, as measured by their parents' willingness to pay for it, less children's programming will be produced than would be desirable, even it a widespread pay system develops. Government funding of children's program production may provide an appropriate policy tool to encourage both advertiser-supported and pay-television broadcasters to increase the amount of children's programming.

CHAPTER FIVE

STAFF RECOMMENDATIONS

The Task Force has concluded that broadcasters have, in general, complied with the advertising guidelines but not with the programming guidelines established in the Policy Statement. Accordingly, we propose that the FCC maintain these advertising guidelines and await the conclusion of the FTC's proceeding on children's advertising before determining if any further action is necessary.

The Federal Communications Commission has several options with regard to children's television programming. The Commission can (1) rescind the Policy Statement; (2) maintain the Policy Statement; (3) mandate specific programming regulations (4) and undertake stuctural changes that will increase the number of outlets and the availability of direct payment for programming. The fourth option, structural change, can be implemented in conjunction with any of the other policy options.

Before we evaluate the merits of these options, we wish to note certain fundamental conclusions that we have reached. The structural changes discussed in the fourth option clearly offer the best means of correcting the lack of educational and instructional programming for children. Increasing the number of outlets for advertiser-supported programming and widespread and unfettered direct pay opportunities by cable or subscription television will probably be far more effective in the long run than mandatory programming rules will ever be.

We are, however, recommending additional Commission action in the form of mandatory programming rules. We see these rules as the only short-term solution available to us at this time. Mandatory programming rules, however, are at best an imperfect and temporary measure to provide some interim relief for the lack of educational programming for children.

We are also recommending that the Commission terminate this programming requirement when the television market provides sufficient amounts of children's educational programming. We are proposing that the specific standards that the Commission might use to determine when the mandatory programming rule could be terminated be addressed in a Further Notice of Inquiry.

We also wish to stress the importance that we attach to actions only other governmental agencies and independent institutions can take to provide additional sources of children's educational programming. Since one of the functions of public broadcasting is to serve interests that are not adequately served by advertiser-supported broadcasting, we recommend that CPB and PBS reevaluate their priorities to place greater importance on programming for children.

Congress could greatly assist that effort by recognizing that the present system of funding public broadcasting places children's programs at a disadvantage. We recommend, therefore, that Congress consider altering the funding structure for CPB by earmarking funds for children's programming, by allocating additional matching funds to PBS stations that air children's programs, and by permitting viewers to earmark station donations for children's programs.

We also recommend that Congress change the law that precludes advertising from being inserted by advertiser-supported stations into programming funded by HEW (Office of Education) under the Emergency School Aid Act. That change alone, by drastically altering the profitability of airing those programs, might produce more dramatic results than our recommended mandatory programming rule. In addition, we would support additional Congressional actions, such as the creation of a national programming endowment for children, that would generate additional sources of educational programming for children outside the structure of advertiser-supported programming.

Evaluation of Options

The Commission can rescind the Policy Statement and take no further action.

By so doing the Commission will accept the fact that the economic incentives of an advertiser-supported broadcasting system do not support the provision of specialized programming for small, specialized audiences such as children. The Commission will then have to rely on other institutions, such as public broadcasting and federally-funded children's programs, to meet the demand for high-quality educational and instructional programming for children. The Commission may also encourage increased government expeditures for children's programs.

While all of these options have major contributions to make to children's programming, our analysis leads us to believe that children's programming must be provided on advertiser-supported stations if it is to be available to the entire child population. Thus we believe that the Policy Statement isolated issues of legitimate concern both to the Commission and to the general public.

In addressing the adequacy of the Policy Statement, in Action for Children's Television v. FCC, the Court of Appeals upheld the Commission's decision to undertake a cautious multi-step regulatory approach, stating that

> "we see no compelling reason why the Commission should not be allowed to give the industry's self-regulatory efforts a reasonable period of time to demonstrate that they will be successful in rectifying

> the inadequacies of children's television identified in the Children's Report."[88]

The Court also noted, however, that "having recognized that a serious problem exists in this area, the agency has a continuing responsibility to do something about it should subsequent experience demonstrate that more needs to be done."[89]

In view of the support for the basic programming goals of the Policy Statement provided by our evaluation in this volume and the specific directions of the Court of Appeals, we do not recommend that the FCC rescind the Policy Statement and take no further action.

The Commission can maintain the Policy Statement in its present state.

Almost five years of experience with industry self regulation under the Policy Statement indicates that it has produced no changes in the programming practices of broadcasters and has falsely raised the expectations of interested members of the public. In addition, to date petitions to deny based on non-compliance with the Policy Statement have been unsuccessful, indicating that the standards established in the Policy Statement may be so broad as to be unenforceable.[90] Therefore, we do not recommend maintenance of the status quo. If, however, the Commission does not agree with the staff's assessment of compliance with the Policy Statement, then maintenance of the status quo is a viable option.

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[88] Action for Children's Television v. Federal Communications Commission, 564 F.2d at 480.

[89] Id. at n. 40.

The Commission can establish mandatory programming rules to require licensees to broadcast specific amounts of educational and instructional programming during specific dayparts for both preschool and school age children.

The thrust of the programming section of the Policy Statement was the provision of increased choice and diversity of programming, with particular emphasis on educational and instructional programming, rather than merely an increase in entertainment programming for children. We have found that licensees use widely varying interpretations of "children's" and "educational or instructional programming" in filling out forms under existing requirements, and although stricter requirements may alter their reporting, the FCC will continue to defer to licensee characterizations of programming, absent a clear abuse of discretion.[91]

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[90] See for example, California Television Stations, 68 FCC 2d 1074, (1978); Memorandum Opinion and Order, FCC 79-496, (released August 13, 1979).

The staff analysis suggests that there have been no increases in the amount of educational programming for children.[92] In view of the economic incentives of the broadcasting industry, with its existing structure and the demographic and cognitive characteristics of the child audience, it is unlikely that any Commission action, short of rules, will bring about real change in programming practices.

The staff recommends a rule requiring 5 hours per week of educational or instructional programming for preschoolers and 2½ hours per week of educational or instructional programming for school age children. This programming must be scheduled between the hours of 8 a.m. and 8 p.m. on weekdays.

We have proposed twice as much programming for preschool children as for school-age children. Because preschool children cannot read, their access to diverse sources of information is extremely limited and television programming provides one of their primary sources of information about the world around them. School-age children have acquired reading skills and therefore can make use of a broad range of information sources that are unavailable to preschoolers.

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[91] See Volume II, Chapter Five.

[92] See Volume II, Chapter Two.

We believe that our proposed rules are reasonable in their scope. One network has for many years met the five-hour weekly standard that we propose for preschool programming. We believe that the same standard can be met by the other networks. Many independent stations program much of their broadcast day for the general child audience and some broadcast syndicated programs for preschoolers. Accordingly, we believe that a requirement of 7 1/2 hours weekly for preschool and school-age programming is not burdensome.

An alternative to the mandatory programming rule is for the Commission to amend its delegations of authority to adopt these programming standards as a processing guideline which the Broadcast Bureau could use when reviewing broadcast license renewals. Licensees that propose less children's programming than the processing guideline would automatically be presented to the Commission for full review.

Our intent is to provide educational programming for young children while, at the same time, preserving broadcaster discretion in scheduling. We have proposed a scheduling framework of 8 a.m. to 8 p.m. to preclude the scheduling of children's programs in graveyard hours; however, we recommend that the Commission look favorably upon diverse scheduling formats within this framework. So long as broadcasters comply with the weekly requirement of 7 1/2 hours of children's educational programming on weekdays between 8 a.m. and 8 p.m., we would encourage licensee discretion as to when and how this programming might be most effectively scheduled.

The staff believes that a compelling case can be made for the constitutionality of a mandatory programming rule in this particular instance, although the courts have never before considered the legality of a mandatory programming requirement. An outline of our analysis of the Commission's statutory and constitutional authority to promulgate this rule is presented in the Appendix.

It is clear that the only manner in which the Commission can insure licensee compliance with its children's programming policies is by mandatory programming requirements. The Commission must realize, however, that while the regulation will result in increased amounts of educational programming, it will not insure high quality programming. To some extent this problem can be remedied by requiring licensees to schedule these programs during dayparts when the viewing audience is relatively large and broadcasters are more likely to compete for audience by producing better quality programs. Nonetheless, the fundamental issue of program quality cannot be addressed.

While no rule of the Commission can deal directly with program quality, Congress could indirectly affect the amount and quality of children's programming by reconsidering the funding structure for public broadcasting, which places children's programs at a funding disadvantage. Congress could also indirectly deal with the issue of program quality by amending the Emergency School Aid Act restrictions discussed above. As long as Congress requires stations to air those programs without any advertisements, advertiser-supported broadcasters may find it more profitable to spend a minimal amount on purchasing programs on which they can sell advertisements. If the Act were amended, however, broadcasters might well prefer to use at least some of the programs developed under the Act. In addition, Congress could establish a programming endowment to fund children's programs.

In proposing a programming regulation, the staff believes that this is, at best, a short-term remedy to what is fundamentally a structural problem. Consequently, we recommend that the Commission make clear its intention to reevaluate the need for this programming regulation when there are indications in the marketplace that increased outlets and structural diversity have provided natural and durable solutions to the provision of programming to the child audience. Retention of such a rule after significant structural change in the industry might well be counter-productive--for example, by slowing development of stations that specialize in children's fare.

We recommend, therefore, a Notice of Proposed Rulemaking requiring mandatory educational, age-specific programming and a Further Notice of Inquiry seeking suggestions on the standards that can be used to determine when structural diversity has been achieved.

The Commission can look to longer-term structural solutions that involve more broadcast outlets and options for parents to pay directly for programming services.

Either in addition to or in conjunction with any of the policy options described above, the Commission can encourage and implement structural changes in the broadcast system that will lead to increased children's programming. Two features of the current broadcast system that are responsible for the market failure with respect to children's programming are not immutable: the small number of outlets and the paucity of options for direct viewer payments for programs.

The existence of few viable outlets in most markets could be altered by UHF comparability efforts, broadcast satellites, subscription television, and cable television. We have already seen the tendency of independent stations in the large markets to provide more programs for children and to provide them at different hours than the network affiliates. As the number, profitability, and power of independent stations increase throughout the nation we can expect more programming directed to the interests of specialized audiences such as children.

The spread of cable television and subscription television will make it possible for viewers to purchase programming that is not available from advertiser-supported broadcasters. Three new children's program packages are just becoming available from cable television. A relaxation of the Commission rules with respect to subscription television might encourage similar packages there too.

We strongly recommend that the Commission pursue structural changes in these areas. Over time, regulatory efforts should be directed to making it possible to rely on the incentives of the private market to stimulate quality children's programming, as only then will the efforts of the broadcasters be harnessed toward achieving the public good.

In summary, we recommend that the Commission instruct the staff to develop a Notice of Proposed Rulemaking and Further Notice of Inquiry. The Notice of Proposed Rulemaking should set for comment a proposed mandatory programming regulation requiring all licensees to air 5 hours of preschool educational/instructional programming on weekdays between the hours of 8 a.m. and 8 p.m. and 2½ hours of educational/instructional programming on weekdays for school age children between the hours of 8 a.m. and 8 p.m. The Further Notice of Inquiry would be directed to the standards or indicators that the Commission could use to determine when the marketplace is offering sufficient additional outlets and alternative delivery systems to indicate that mandatory programming rules are no longer necessary.

We further propose to transmit this report to Congress with our recommendations to modify the funding structure of public broadcasting to encourage the production of children's programs, and to remove the restriction against commercial sponsorship on ESAA-funded children's programs.

APPENDIX A

LEGAL ANALYSIS

The Children's Television Task Force staff recommends, among several proposals, adoption of a time-limited rule mandating carriage by television broadcasters of specific minimal amounts of age-specific and instructional or educational children's programming. The Task Force staff believes that the Commission has the statutory and constitutional authority to promulgate that rule. Any case testing the validity of such a programming rule would be one of first impression, but the staff believes the Commission would be upheld based on the record compiled to date, as supplemented during an appropriate notice and comment period.

While a complete exploration of the relevant statutory and constitutional issues will be part of any rulemaking proceeding instituted by the Commission as a result of this Report, the staff offers below a brief initial summary of the underlying issues of FCC statutory and constitutional authority.

Statutory Authority

The Commission's rule making authority is quite broad. The Communications Act authorizes the Commission to make rules and regulations to serve the "public convenience, interest, or necessity." 47 U.S.C. 303(r). See also 47 U.S.C. 307(a), (d), 309(a). Courts have generally acknowledged this authority to be "not niggardly but expansive." National Broadcasting Co. v. United States, 319 U.S. 190, 219 (1943). It is equally clear that those rules can affect program content. As the Supreme Court has observed, the Commission is "more than a traffic policeman concerned with the technical aspects of broadcasting." Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 395 (1967), citing National Broadcasting, supra.

The courts, moreover, give great deference to agency construction of enabling statutes. In Red Lion, the Court upheld Commission rules requiring broadcast stations to give air time for replies to personal attacks. The Court based its ruling, in part, on the Commission's construction of stautory language in Section 315(a) of the Communications Act, 47 U.S.C. 315(a). On this point, the Court stated that an agency's construction of its enabling statute is controlling unless there are "compelling indications" that it is wrong. 395 U.S. at 381.

The Commission, then, has broad discretion to define and implement the public interest standard of the Act. As the D.C. Circuit recently said: "Within these broad confines [of the public convenience, interest, or necessity], the Commission is left with the task of particularizing standards to be used in implementing the Act." National Black Media Coalition v. FCC, 589 F.2d 578, 580 (1978). Hence, the Commission could find that the public interest standard of the Act empowers it to adopt rules for children's television programming.

Recent cases indicate that the courts would affirm the Commisison's adoption of a quantitative children's programming rule as a reasonable exercise of its statutory authority. In Action for Children's Television (ACT) v. FCC, 564 F.2d 458 (D.C. Cir. 1977), for example, the court affirmed the Commission's 1974 Policy Statement adopting general television license requirements for increased educational and age-specific children's television programming. The court rejected ACT's argument that the Commission, based on the record at that time, should have adopted a specific rule that would have required each station to broadcast fourteen hours of pre-school and other age-specific children's programming per week, aired daily at specified times, rather than leaving the amount of the increase to broadcasters self-regulatory discretion, to be evaluated at a later time. In the course of its opinion, however, the court commented that "the Commission may well have adequate authority to regulate in this area, and even perhaps to the extent proposed by ACT...." 564 F.2d at 480.

The same court subsequently addressed the issue again when it upheld the Commission's decision not to establish different kinds of categorical programming requirements in National Black Media Coalition, supra. The Commission had found that it had the legal authority to establish "percentage guidelines" for local, news, and public affairs programming to determine in the comparative license renewal context whether a licensee was providing substantial service to its community, but declined to do so for policy reasons. The court called the FCC's decision a "policy judgment traditionally left to agency discretion" and "within its [the Commission's] discretion." 589 F.2d at 584.

The Commission's statutory authority to adopt general requirements that television broadcasters air reasonable amounts of these types of children's programming also does not seem to be questioned. The Commission did so in adopting its 1974 Policy Statement, and was upheld in so doing by the courts. The question now is whether it can quantify these requirements in formal rules, with explicit terms of minimal percentages of time or numbers of hours.

The scope of the FCC's statutory discretion in this or any other programming matter is, of course, not unqualified. A major prerequisite is a supporting record to show that the agency is acting reasonably. As one court recently observed, "A regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist." Home Box Office, Inc., v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977), quoting City of Chicago v. Federal Power Commission, 458 F.2d 731, 742 (D.C. Cir. 1971), cert. denied, 405 U.S. 1074 (1972). The extent of the FCC's regulatory authority, then, depends on a showing in the record that there is an inadequate amount of age-specific and educational or instructional children's television programming and that the rule proposed is a reasonable means of correcting the problem.

Preceding sections of this report establish that there is a definite need for the Commission to act in the area of children's television, and that there are no more appropriate or efficient means for increasing the number of children's television programs. The staff's report shows that the discretion the FCC allowed broadcasters in 1974 to determine what level of increased age-specific and instructional programming for children would be adequate has not worked. The Commission has at this point exercised every other short-range option available. All of them have proven ineffective. There are no more appropriate or efficient means, at least in the short term, for increasing the supply of such children's television programs. As the thrust of any Commission activity in the children's area is directed at the quantity and categories of children's programs rather than the quality and content, the effect on First Amendment rights should be minimal.

Constitutional Authority

The proposed rules, like many existing FCC rules, would place limitations upon a broadcaster's "absolute" exercise of First Amendment interests. Broadcasting is a medium entitled to First Amendment protection. U.S. v. Paramount Pictures, Inc., 334 U.S.

131, 166 (1948). Accordingly, as explained in the 1974 Policy Statement, the Commission has traditionally exercised caution in approaching any regulation affecting programming.

Broadcasters' First Amendment interests lie in choosing programs and making editorial judgments. This constitutional interest must not be limited any more than necessary by the Congress, or by its agent the FCC. See generally CBS v. Democratic National Committee, 412 U.S. 94 (1973). At the same time, however, the public has a First Amendment interest that, according to the Supreme Court, is "paramount" over the broadcasters' First Amendment interest. Red Lion, supra, 395 U.S. at 390.

The Court in Red Lion also made it clear that the FCC could obligate broadcasters to air certain programming if necessary to serve the public's First Amendment interests. The Court said that it found "nothing in the First Amendment which prevents the Government from requiring a licensee to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves." 395 U.S. at 389. In the unlikely event of broadcaster self-censorship, the Commission would "not be powerless" to require "adequate and fair attention to public issues." Id. at 393. The Court invoked the statute, long administrative practice, and past cases in finding that the FCC may constitutionally "treat licensees as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern." Id. at 394.

Red Lion's language has traditionally been cited as support for the Commisison's current requirement that broadcasters provide adult informational programming, and was relied upon by the FCC in its 1974 Policy Statement to justify similar requirements for informational programming for children. 50 FCC 2d at 4-6. Children have traditionally been treated by the courts as uniquely deserving of FCC concern as a discrete community segment with separate needs. See, e.g., FCC v. Pacifica Foundation, 438 U.S. 726 (1978), and cases cited in Justice Powell's concurring opinion at 7.

Despite Red Lion's broad language, some courts have suggested that highly specific quantitative FCC program requirements may raise constitutional problems. In National Association of Independent Television Producers and Distributors (NAITPD) v. FCC, 516 F.2d 526 (2d Cir. 1975), the court upheld a children's programming exception to the Prime Time Access Rule against a First Amendment challenge.

Broadcasters had argued that by allowing the networks to reclaim the "access" half hour by providing children's programming, the FCC was unconstitutionally promoting a preferred category of television programming. The court rejected this argument, noting that the FCC had been given the power to favor this and other broad categories of public-service programming such as news and public affairs:

> The public interest in the general regulation of broadcasting may require some sacrifice of an entertainment category for a public affairs category...." *Id.* at 536.

It did, however, comment in dictum that "it may be that *mandatory* programming by the Commission even in categories would raise serious First Amendment questions." Likewise the D.C. Circuit in *ACT* recognized First Amendment concerns in this area, but at the same time it specifically encouraged the FCC to revisit the question of adopting specific rules if its option of increasing children's programming diversity by policy statement rather than by rule proved unsuccessful. 564 F.2d at 480-81.

Under the proposed regulations the FCC is not attempting to dictate which programs must be shown within the category of non-entertainment programming. Nor is the Commission attempting to define the category so restrictively as to proscribe implicitly what it cannot explicitly. To withstand constitutional scrutiny, the proposed regulation must reserve to the licensee the requisite flexibility to exercise the discretion reserved to licensees under the ACT, while enforcing the mandate on both the licensees and the Commission to act "in the public's interest".

It could be argued that the FCC's existing guidelines adopted in 1974, and upheld by the courts, that require licensees to air unspecified amounts of age-specific and instructional television programming for children would be even more constitutionally sound if we gave broadcasters clearer guidance on what will be considered adequate performance. Leaving this to ad hoc action by the Commission might be considered to create unnecessary vagueness problems for licensees and the Commission.[93]

An important case touching on these questions is Writers Guild of America, West, Inc. v. FCC, 423 F.Supp. 1064 (C.D. Cal. 1976). The Commission was found to have persuaded the networks and the National Association of Broadcasters to amend the NAB television code to discourage entertainment programming "inappropriate for viewing by a general family audience" during the first prime time hour and the hour immediately preceding prime time. See Id. at 1072. The Court voided the Commission's action, after carefully emphasizing that it was not deciding the desirability of the family viewing hour policy and only the procedures that led to its adoption (_Id_. at 10 F2-F3).

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[93] This argument was considered in the comparative renewal context by the court in National Black Media Coalition v. FCC, supra, but was rejected there because the court felt that in that context the proposed quantitative guidelines would not obviate the need for ad hoc hearings "to weigh the effect of other factors in each individual case." Thus the court believed that the gain in "certainty" to licensees from adoption of these guidelines would be minimal and therefore their adoption was not constitutionally required. 589 F.2d at 581.

Two factors distinguish the issues of _Writers Guild_ from the proposed children's programming rule. First, the court in _Writers Guild_ distinguished sharply between FCC regulation of content to _increase_ program diversity and the "roving power to screen out material." _Id_. at 1147. The court viewed the family viewing hour as an example of the latter, an exercise of the negative censorship power of prior restraint. By contrast, the proposed rule here is clearly an attempt to foster (rather than prohibit) certain programming. And that rule is designed to achieve programming specifically meeting children's needs, not simply adult oriented programming that avoids "offense" to them.

The second difference is that _Writers Guild_ involved allegations of Commission pressure to achieve television programming changes without following administrative due process. The Court was extremely critical of the FCC's alleged circumvention of normal administrative rulemaking channels, especially the lack of a proper record. The Court did, however, add that constitutional problems might be avoided if an FCC rule were framed in positive, rather than negative, terms and if a proper record were developed to support it:

> It may be that the rights of children to diversity of programming have been so severely ignored by broadcasters that affirmative requirements that broadcasters meet their needs in the times when children most frequently watch television could be

> constitutionally supported in a properly prepared administrative record. Id. at 1149.

The proposed children's rule is not the indiscriminate censorship condemned in Writers Guild. The proposed rule has more definite standards. It requires, rather than prohibits, the broadcasting of material. Restriction of speech or conduct is not the purpose of the proposed regulation. While requiring the broadcast of specific categories of programming it permits the licensee to retain the requisite amount of discretion to avoid constitutional infirmity. Moreover, this proposed rule merely quantifies a general requirement the FCC has already imposed on all television broadcasters without constitutional question. The thrust of the Commisison's activity here is directed at the quantity and diversity of children's programs by categories, rather than their quality and specific content. The effect on First Amendment rights should be minimal and incidental.

Finally, the proposed rule establishes categories within which the broadcaster is accorded broad discretion to include a wide variety of programs. See NAITPD, supra, 516 F.2d at 539-40. The Commission will defer to licensees' judgments unless they are unreasonable or made in bad faith. The rule as proposed by the staff has a time limitation to prevent possible "overbreadth" application.

There may, of course, be problems of definition and compliance, but those problems should be no more difficult than the ones the FCC grapples with in implementing the fairness doctrine, which also affects constitutional interests, or in defining "news" or "public affairs." Certainly these problems will be no more difficult than those the FCC has dealt with to date in defining children's program types for purposes of its 1974 Policy Statement, the reporting forms in use by licensees since 1976 and in defining the children's programming exception to the prime time access rule. The latter definition, for example, was specifically upheld against constitutional "vagueness" attacks in NAITPD, supra. See 516 F.2d at 539-40.

There are admittedly some legal risks with the proposed rule. The proposal does go further than the existing Policy Statement in quantifying the FCC's requirement that broadcaster's air certain program categories. In implementing the Fairness Doctrine, for example, the broadcaster is accorded broad discretion in deciding which public issues to cover, when to cover them, and how to cover them. The FCC does have percentage processing guidelines for testing the amount of news, public affairs and other total informational programming a licensee airs. But these guidelines are not fixed rules, and deviations are reviewed on an ad hoc basis.[94] While it may be argued, therefore, that a fixed quantitative children's rule exceeds the bounds of reasonableness and this runs into First Amendment conflicts, the cases discussed above indicate that the argument is unsound as the Commission has developed a strong factural record to support its action.[95]

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[94] As a second option, of course, the Commission may wish to propose simply to add the proposed minimum standards to its existing television renewal processing guidelines, and seek comments on this option as well as on the adoption of specific rules.

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[95] The staff believes this record demonstrates why the Commission cannot rely on market forces alone to provide sufficient children's television programming to adequately serve the public interest. This is in contrast to a situation that appears to exist in radio where the record to date suggests that the marketplace will provide sufficient nonentertainment programming to serve the public interest without Commission guidelines. The Commisison retains the jurisdiction, and under the 1934 Act the responsibility, to intervene if market deficiencies occur and, as indicated in the Radio Deregulation Notice, would do so if it were to find instances of marketplace failure in the provision of nonentertainment radio programming analogous to that found here by the staff in the area of children's television programming.

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INTRODUCTION

The issuance of the Report and Policy Re: En Banc Programming Inquiry, 44 FCC 2302, 2314 (1960) marked the Commission's initial indication that it considered children to be more than "adults in miniature". The Commission listed programming for children as one of the "major elements" usually necessary for licensees to meet the public interest needs and desires of their respective communities. Continuing the theme, the 1974 Children's Television Report and Policy Statement[1] emphasized that broadcasters had a "special obligation" to serve children as a "substantial and important" community group. The growing concern and sentiment in the public sector as to the uniquely pervasive presence of television in the lives of all Americans is reflected by numerous petitions to the Commission and the progression of references to children's interests in Commission documents from a "major element" into a "special obligation" owed to a "substantial and important" segment of the community. Television's particular accessibility to children creates a special duty on the part of the licensee to ensure that the needs and interests of children are recognized when meeting the overall obligation under the Communications Act to operate in the public interest.

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[1] 50 FCC 2d 1 (1974), recon denied 55 FCC 2d 641 v. FCC, 564 F 2d 458 (D.C. Cir. 1977).

In 1974, the Commission elected not to formalize its commitment through the rule making process, preferring to act through "specific policies". The District Court upheld the Commission in ACT v. FCC supra. The major influence upon the Commission's decision was the apparent manifestation of industry willingness to improve the quality of children's television by self regulation. As cited in ACT, the Commission addressed the issues raised in the First Notice from three perspectives: (1) the Commission's authority to regulate programming and advertising practices; (2) the previous performance of the broadcast industry vis-a-vis children's television; and (3) the expected improvements by licensees if they were to meet their responsibilities to the child audience. The Commission emphasized that broadcasters have a "special obligation" to serve the needs of children.

> "As we have long recognized, broadcasters have a duty to serve all substantial and important groups in their communities, and children obviously represent such a group. . . .Accordingly, we expect television broadcasters, as trustees of a valuable public resource, to develop and present programs which will serve the unique needs of child audience."
> 50 FCC 2d at 5.

As indicated by the Court in ACT, the Commission consistently underscored its intention to closely monitor upon industry representations was consistent with the Communications' Act's preservation of licensee discretion, absent a clear showing of unwillingness or failure to act in a manner that is responsible and observant of the public interest.

The primary purpose of the Second Notice of Inquiry was to evaluate the effectiveness of compliance with the guidelines of its 1974 report; and based upon that evaluation, to assess possible alternatives to the 1974 approach if needed. As the Commission stated in its Report:

> If self regulation does not prove to be a successful device for regulating the industry as a whole, then further action may be required of the Commission to ensure that licensees operate in a manner consistent with their public service obligations.

Full compliance by all license was expected by January 1, 1976.

Volume II of the Children's Television Task Force Report reports the findings of a series of studies analyzing industry compliance with the 1974 Policy Statement.

As mentioned, the issuance of the Second Notice was designed to elicit public and industry comment and to facilitate staff analysis. Questions number 41-45 of the Notice are specifically directed towards the compliance aspect of the original report. Essentially, the questions cover five major topics:

(a) overall amount of programming aired for children;

(b) amount of educational and informational programming for children;

(c) specific programming;

(d) scheduling;

(e) overcommercialization.

These five areas are covered in Chapters 1-5 of this volume. Questions 46-48, referring to separation devices, host selling and tie-ins, were the subjects of in house research and are summarized at the conclusion of the Task Force analyses of the compliance questions.[2]

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[2] Remaining issues in the Second Notice include:

1. Network Cooperation in scheduling children's programs. The Second Notice raised the question regarding network cooperation in developing and scheduling children's programs. Very few parties filing comments addressed the issue of network cooperation. The Quaker Oats Company, in their filing, urged that the Saturday period between 9:00 a.m. and noon be made uniform on all three networks, with broadcasters and advertisers cooperating to create a single children's TV network. All of the networks would broadcast the same shows simultaneously. While the idea has merit, cooperative agreement among networks is a decision to be made by the networks and not the Commission.

2. Public Service Announcements (PSA). We recognize the value of public service announcements and efforts by licensees to air such announcements during children's programs. Parties filing comments in the Second Notice indicate the increase use of PSA during children's programs. Research submitted by ABC indicates children are learning information contained in PSA. The Commission is currently conducting an inquiry into the issue of public service announcements (see Memorandum Opinion and Order and Notice of Inquiry, RM 2712 FCC 2d (adopted August 8, 1978)). We will address the issue of public service announcements for children in the context of the PSA Inquiry.

3. Ascertainment of Children's Needs and Interests. The issue of ascertainment is addressed in conjunction with the License Renewal Form, see Chapter 5, Vol. II.

Chapter One

IMPACT OF THE 1974 POLICY STATEMENT UPON THE OVERALL AMOUNT OF PROGRAMS DESIGNED FOR CHILDREN TWELVE YEARS AND UNDER

The Commission stated in its 1974 Policy Statement that the child audience was a central part of a licensee's community that should be served with responsive programming. Commenting on the overall amount of programming made available for children, the Commission stated that it expected stations to make a "meaningful effort" to develop and present programs that will serve the unique needs of the child audience.[3]

Responsive programming in children's television must reflect and respect several conditions that contribute to the "unique" nature of the child audience: age, affecting their cognitive development; youth and immaturity, requiring educational and informational stimulus; and lack of "life experience", the lack of exposure explaining their inability to discern the complex and technological aspects of the medium.

Any assessment of the responsiveness of children's programming, however, must be preceded by an analysis of the availability of programs, for the Commission made clear in its 1974 Policy Statement that failure by commercial television stations to provide programs for children "will not be acceptable."[4] This section, therefore, focuses on changes over time in the overall amount of children's programming aired.

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[3] 50 FCC 2d at 5 (para. 16) and 6 (para. 20).

There are several ways to examine the amount of children's programs aired by licensees, for example, total number of programs, total amount of time and average number of minutes on a per station basis. As the Commission indicated in 1974, it expected to see an increase in terms of the number of hours broadcast to children.[5] The most efficient means of determining compliance is the amount of time devoted to children's programs on a per station basis.

The Second Notice presented the following questions for commentary regarding the overall amount of programming aired for children:

(a) What measures, if any, have been taken by licensees and their program suppliers, including the networks, to make available and air more children's programming?

(b) Are more children's programs presently being produced for material distribution and aired by licensees than prior to January 1, 1976? If so, how much more and what types of programs?

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[4] 50 FCC 2d at 6 (para. 20). "Availability" does not refer to production, but whether the licensee has made a "meaningful effort" to broadcast responsive programming for the child audience.

[5] 50 FCC 2d at 6 (para. 20).

(c) Are more children's programs now totally produced and aired than prior to January 1, 1976? If so, how much more and what types?

(d) How should we measure compliance with the requirement that licensees make a "meaningful effort" to serve the child audience with an adequate amount of overall programming?

The Task Force funded two studies that examine the overall amount of children's programs aired by licensees. The first was prepared by Dr. Joseph Turow, the second by Dr. John Abel.[6]

The Turow Report

The Turow study examined network children's television from 1948-1978. The study relied upon the network definition of children's programs, as the FCC did not establish its current definition of "programs designed for children twelve years and under" until 1975.[7] Dr. Turow's research also focused upon children's series, that is, network produced or aired programs that appeared on a regular, though not necessarily, weekly basis. Dr. Turow also included programs such as Afterschool Special and information spots, such as Schoolhouse Rock.

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[6] Dr. Turow is an Assistant Professor of Communications, Purdue University; Dr. Abel is an Associate Professor, Department of Telecommunication, Michigan State University. (See Vols. IV and V).

[7] Memorandum Opinion and Order, Docket No. 19142, 53 FCC 2d 161 (1975). The Turow report relied upon the networks for the purpose of defining children's programs.

According to the Turow report, each network accounted for approximately one-third of the children's shows telecast. Additionally, the number of children's series fluctuated substantially over the years, from a low of ten (10) in 1948-1949 to a high of sixty-two (62) in 1972-1973.[8] The time devoted to children's programs also fluctuated from a low of 6.5 hours per week in 1948-1949 to thirty-four (34) hours per week in 1972-1973.

Closer examination of Turow's data shows that since the 1974-1975 years, when the Policy Statement was made, ABC and CBS have shown a decrease in the number of children's programs, while NBC has shown an increase since 1976-1977. NBC, however, has been third in the number of network children's series shown since 1960. Likewise, there has been a decrease in the number of children's programs on ABC and CBS since 1966-1967.

The Abel Report

The second study of program availability conducted for the Task Force, the Abel study, was directed towards the compliance aspect of the Second Notice. Dr. Abel made comparisons of the amount and scheduling of a sample of children's programs during two television seasons, 1973-1974, the season just prior to the Policy Statement, and 1977-1978, the most recent broadcast season.[9] Information regarding the number of programs and amount of time (in minutes) devoted to children's programs was compiled.

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[8] See Turow, Vol. V.

The Abel report provided several analyses examining the average amount of time per station devoted to children's programs.

Average Amount of Time Per Station Devoted to Children's Programs

The most appropriate method for comparing the amount of time devoted to children's programs in 1977-1978 with 1973-1974 is to compute the average amount of time per station devoted to children's programs. This analysis is the most accurate per station description of the amount of time licensees devote to children's programs, and thus becomes the critical means to assess compliance with the 1974 Policy Statement. Several analyses were made comparing the average amount of time per station (in minutes) for 1973-1974 with average amount of time in 1977-1978.

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[9] A summary of the methodology and results of the Abel report are found in the Executive summary of his report. For a detailed description of the methodology and results, see Abel Report, Vol. IV. Abel developed two independent composite weeks, one week representing the 1973-74 broadcast season and the other week representing the 1977-78 season. The composite weeks developed by Dr. Abel are not the same composite weeks the Commission used to evaluate licensees' performance in 1973-74 and 1977-78.

The data indicate that the average amount of time stations devoted to children's programs in 1977-1978 was higher than the amount of time in 1973-1974. The average amount of time in 1977-1978 was 11.3 hours per week, compared with 10.5 hours per week in 1973-1974, or an increase of about one hour per week. Abel then analyzed the average amount of time per station devoted to children's programs according to network affiliates and independent stations.

A. Network Affiliates

The data show that the average amount of time per network affiliate in 1977-1978 was slightly less than in 1973-1974. An average of 10.37 hours per station was devoted to children's programs during Abel's 1977-78 composite week compared with 10.40 hours in Abel's 1973-1974 composite week. Considering all sources of children's programming on network affiliates (network originated programs, programs from syndicated sources, and locally produced and originated programs) no more time was devoted to children's programs in 1977-1978 than in 1973-1974.

The average amount of time per network affiliate devoted to network originated children's programs decreased in 1977-1978 compared with 1973-1974. Network affiliates, however, did devote significantly more time to programs from syndicated sources. The general amount of time devoted to locally produced and originated children's programs on network affiliates also decreased in 1977-1978 compared with 1973-1974.

B. Independent Stations

Independent stations devoted significantly more time to children's programs in 1977-1978 than they did in 1973-1974. The average amount of time per station in 1977-1978 was 14.3 hours for the composite week compared with 10.6 hours for the 1973-1974 composite week, an increase of 3.7 hours.

Independent stations, on average, devoted significantly more time to airing children's programs from syndicated sources in 1977-1978 than in 1973-1974. Independent stations, however, aired less average number of minutes of local programs during the 1977-1978 composite week compared with the 1973-1974 week.

The data on average number of minutes per station devoted to children's programs presents two important facts: 1) there was no difference between the 1977-1978 and 1973-1974 composite weeks on the average amount of time per network affiliate station devoted to children's programs, and 2) independent stations significantly increased the average amount of time devoted to children's programs in 1977-1978 compared with 1973-1974. Additionally, 24 of the 28[10] independent stations analyzed in the Abel report are located within the top 52 markets. These findings suggest that the average amount of time per station devoted to children's programs increases with the presence of one or more independent stations in a market. To test that possibility, the following analysis examines the average amount of time per station devoted to children's programs, according to market size, with subsequent analysis for network affiliates and independent stations.

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[10] One independent station did not air children's programming during the 1977-78 composite week analyzed in the Abel Report.

Average Amount of Time Per Station by Market Size

Abel conducted separate analyses of average amount of time per station by market size to see if market size has any influence upon the amount of children's programming a station airs.

Data were analyzed on the average number of minutes per station devoted to children's programs for the composite week for 1973-1974 and 1977-1978 by four market strata: a) markets 001-052, b) markets 053-104, c) markets 105-156, and d) markets 157-209.

The data indicate that there are no differences among the four strata in the average amount of time devoted to children's programs during 1973-1974. The data, however, show that there are differences among strata in terms of the average amount of time per station devoted to children's programs for 1977-1978. Stations in markets 001-052 devoted, on average, more time to children's programs during the 1977-1978 composite week than did stations in smaller markets.

It should be clear that stations in the four market strata did not significantly differ from each other during 1973-1974 in terms of the average amount of time devoted to children's programs.

They did differ during 1977-1978, and the larger market stations devoted significantly more time to children's programs than did smaller market stations.

Average Amount of Time Per Network Affiliate and Independent Station by Market Size

Similar analyses were performed for network affiliates and independent stations. The purpose of these analyses, was to determine if network affiliates or independents in larger markets tended to devote more air time to children's programs than affiliates or independents in smaller markets. None of the comparisons are significant. Neither network affiliates nor independents differed in terms of the average amount of time per station devoted to children's programs based on the market stratum in which they are located. Comparisons among strata for average amount of time independent stations devoted to children's programs is difficult due to the fact that 24 independent stations are located in stratum one, two in stratum two, one in stratum three and none in stratum four. Given the highly skewed nature of the independent station data, it should, at best, be interpreted with caution.

It is noted that the average amount of time devoted to children's programs by independent stations in stratum one is significantly higher than the average amount of time devoted to children's programs by network affiliates in stratum one for 1977-1978. When the average amount of time from independents and network affiliates in stratum one is combined, the result is that the average amount of time per station in stratum one is significantly greater than the average amount of time for stations in the remaining strata. It can be concluded that the average amount of time devoted to children's programs on independent stations in stratum one is the source of the significant difference for all stations combined.

The conclusion to be drawn from the Abel Report is that overall, the difference between the amount of children's programs available in 1977-1978 as contrasted with 1973-1974 is minimal (less than 1 percent). Network and locally originated programs have decreased since the 1974 Policy Statement, while the number of syndicated programs has increased. The overall amount of time devoted to the increase is due primarily to syndicated programs on independent stations, the majority of which are located in the top fifty markets.[11]

Comments by Filing Parties

In addition to studies conducted by the Commission, parties filing comments provided data on the amount of children's programs. Frequently, information regarding how the data were collected and analyzed was incomplete. Therefore an accurate assessment of the validity of the data cannot be made. Of the network comments, only NBC provided descriptive data portraying an increase in overall amount of children's programs since 1976. NBC reports a 6.5 percent increase in amount of children's programs broadcast since January 1, 1976.[12] Prior to January 1, 1976, however, NBC was producing the least overall amount of children's programs of the three networks.[13] According to NBC, nationally distributed children's programs broadcast by the owned and operated stations increased by 76.5 percent since January, 1976 (34.8 hours per year prior to 1976 and 67.8 hours per year since 1976). The owned and operated stations increased their local children's programs in excess of 63 percent since January, 1976 (35.2 hours pre-1976 and 52.3 hours post-1976). Careful attention must be given to the definitions of nationally and locally produced programming (NBC, p. 103). It is unclear what actually constitutes local and national programs. ABC and CBS did not supply quantitative analyses of overall amount of chidren's programs aired over the years.

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[11] See Abel,Vol. IV.

Action for Children's Television (ACT) contends that there has been no increase in the number of children's programs produced for national distribution. In addition, ACT's most recent content analyses of children's programming indicates that very little children's programming is locally produced. Their study is based upon a study monitoring $61\frac{1}{2}$ hours of children's programming aired weekend mornings on network affiliates and independent stations in the Boston market, and on weekday afternoons on ten independent stations in markets across the country.[14]

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[12] Comments submitted by NBC, at 102.

[13] See Turow, Vol. V.

Based on the aforementioned data, it appears that the 1974 Policy Statement did not increase the overall amount of children's programming. This conclusion is buttressed by the market size breakdown of the overall availability data. What little increase there has been in total programming for children has been virtually confined to independent stations in the largest fifty two markets.

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[14] The data used by ACT has some methodological weaknesses because it excludes weekday programming on network affiliates.

CHAPTER TWO

IMPACT OF THE 1974 POLICY STATEMENT UPON THE AMOUNT OF EDUCATIONAL AND INFORMATIONAL PROGRAMMING, AND THE AMOUNT OF AGE SPECIFIC PROGRAMMING AIRED FOR CHILDREN.

Significant among the many issues raised by the 1974 Policy Statement was the dearth of programs designed for children. To remedy the situation, the Commission stated: "We believe that, in the future, station's license renewal applications would reflect a reasonable amount of programming which would educate and inform--not simply entertain."[15] Statistics produced from the First Notice of Inquiry[16] revealed that no network had included educational and informational programs in its Saturday morning schedule, and that only CBS had aired an educational program during the week (Captain Kangaroo). The 1974 Policy Statement noted that the level had sometimes been so low as to "demonstrate a lack of serious commitment to the responsibilities which stations have in this area".[17] To assess the extent of compliance, the Second Notice raised the following questions:

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[15] 50 FCC 2d at 6 (para. 22).

[16] Notice of Inquiry and Notice of Proposed Rulemaking, Docket No. 19142, 28 FCC 2d 368 (1971).

a). Are more informational and educational programs aired for children now than before January 1, 1976?

b). How much of this educational and informational programming is regularly scheduled (on a daily or weekly basis) and how much is periodically scheduled?

c). How much of this programming is nationally produced and distributed by the networks? How much is syndicated? How much is locally produced? What types of programs are produced?

d). When during the broadcast day are locally produced educational and informational programs scheduled?

e). How should we (the Commission) measure compliance with the requirement that television licensees air a "reasonable amount" of educational programming for children?

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[17] 50 FCC 2d at 6 (para. 21).

f). To what extent have there been cooperative efforts between networks and licensees and the educational community to enhance the educational value of programming in the classroom, the home or other settings? To what extent have cooperative efforts been made to foster critical viewing skills in children?

The Staff conducted three studies to examine the amount of educational and instructional programming aired prior and subsequent to 1974.[18]

The first study is derived from the Turow report discussed in Chapter One.

The Turow Report

The data from Turow's analyses indicate changes in entertainment programs and non-entertainment program categories over the past 31 years.[19] Overall, 13% of all network children's programs for the entire time period were classified as non-entertainment, while the remaining 87% of network programs were classified as entertainment. The amount of non-entertainment programming for children peaked at 23% of the 29 network series for youngsters in 1962-63. The lows occurred in 1948-49, when none of the ten children's shows fit the non-entertainment category, and in 1968-69, when 4% of the 49 shows were classified as non-entertainment programs. In the first two years of the 1970's, the percentage of non-entertainment programs rose to 10 percent and fluctuated between 12 and 15 percent over the next six years.

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[18] Commission Rules and Regulations define 'entertainment programs' as "all programs intended primarily as entertainment, such as music, drama, variety, comedy, quiz, etc". 47 C.F.R. § 73.670, Note 1 (b) (1979). Non-entertainment programs are listed by the Commission as 'agricultural', 'news', 'public affairs','religious', 'instructional, 'sports', etc. Id. at (a), (c),-(g).

The Task Force also conducted a study based upon the program data provided by the Abel Report.[20] The staff utilized five individuals with professional training in the areas of children and television to whom we submitted a list containing program titles.[21] These individuals were asked to classify the program titles appearing on the list according to FCC categories, rules, and regulations.[22] In those situations where the judges did not know the program, they were instructed to write "Don't Know". Comparisons were then made between the years 1977-78 and 1973-74 on the basis of three out of the five judges' agreement on program classification.

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[19] Dr. Turow relied upon the networks, TV Guide, and The New York Times for descriptions of children's programs, which facilitated his classification of children's programs as either entertainment or non-entertainment.

[20] The Abel list included network and syndicated programs. The program list was derived from composite week's programming aired on stations broadcasting within 52 randomly selected markets.

The Abel Report presents lists of the network and syndicated program titles identified in his samples for the 1977-78 and 1973-74 television seasons. From these lists, the number of titles identified as instructional programming were selected for analysis. Proportions of instructional programs (instructional programs divided by total number of programs) were calculated, and difference of proportion tests were performed on the data.

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[21] The five individuals are : Dr. Aimee Dorr, Annenberg School of Communications, University of Southern California; Dr. Donald Augustino, Department of Telecommunications, Indiana University Dr. Charles Clift, School of Radio and Television, Ohio University; Dr. Roger Fransecky, Roger B. Fransecky and Associates, Inc. (broadcast consultants); Dr. Rosemary Potter, reading specialist and TV curriculum writer.

[22] In research methodology, a technique used to classify variables is "judgment methodology". Individuals qualified to pass judgment on how items should be classified sort a stack of items into their appropriate categories. Those items receiving total or majority agreement are included in the study. With regards to this particular study, program titles receiving three or more judges' agreement were analyzed.

The 1974 Policy Statement encouraged broadcasters to air more educational and informational programming for children. There is, however, no program type definition for an "informational" category in the FCC Rules and Regulations. 47 C.F.R. § 73.670 (1979). There were no "educational" programs designated by the judges. However, the judges did designate "instructional" programs. The analysis is based upon identification of instructional programs.

The analysis of program titles indicates that there were no statistically significant differences in the number of network originated and syndicated instructional programs between the years 1973-74 and 1977-78. When combining network originated and syndicated program titles for both television seasons, there was one more instructional programs title appearing in the 1977-78 season than appeared in the 1973-74 season. Proportionately, however, there are no differences in children's instructional program titles between the two seasons. (See Table I).

Additional analyses were performed to determine the amount of time devoted to instructional programs during both the 1973-74 and 1977-78 television seasons. No significant differences were found between the two seasons. Further analyses revealed that there were no significant differences between the composite weeks in the amount of time devoted to network originated instructional programs and the same is true for programs from syndicated sources.

Renewal Study

A third study was conducted by the Task Force utilizing license renewal forms. Question seven of the renewal form requires licensees to categorize children's programs according to Commission rules and regulations.[23] It is within the licensees' discretion to categorize a program as either "educational," "instructional," or any of the other categories specified by the Commission. Additionally, question seven requires licensees to submit brief descriptions of programs, program segments, or program series broadcast during the license period that were designed for children twelve years and under. Licensees are also required to list the source, time, and day of broadcast and frequency of broadcast. Of the 201 renewal forms examined, 163 were network affiliates and 37 were independent stations. There was a total of 6,245 children's programs identified by licensees, across all network affiliates and independent stations. The total list of programs contained 3,915 (61.3%) classified by licensees as entertainment, while 1,067 (16.7%) were classified as instructional. When programs classified by licensees as educational (84) were combined with the instructional programs, they comprised 18.0% of total programming. In light of licensees' preference for their own classification scheme, such as "instructional/educational" the total number of educational/ instructional programs rises to 1372 or 21.5% of the total amount of programming.

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[23] See 47 C.F.R. § 73.670. note 1.

Licensees do not define educational/instructional programs uniformly. A comparison of the data reported by licensees on the renewal form with the data reported in Turow study provides evidence that licensees are likely to report instructional/educational in a greater proportion to other types of programming. Given the lack of supportive data for the licensees' varying classifications, we rest upon the more rigorous data collected by the staff.

In conclusion, the data from the Task Force and Turow studies show that the Policy Statement produced statistically insignificant changes in the amount of instructional programming available to children since 1974, suggesting a failure of the "reasonable amount" standard as a method of fostering the development of educational and informational programs.

IMPACT UPON AGE SPECIFIC PROGRAMING

Proponents of age specific programming premise their arguments upon the assumption that children think and act differently not only from adults but also within varying age groups. These qualitative limitations are particularly perceptible in children below the age of seven.

The intragroup distinctions which stem from age are also readily apparent and have led to the emergence of cognitive development theories. The thrust of any theory on cognitive development is an attempt to understand the relationship between the varying stages of a child's growth and development, and his perception of and interaction with his physical and social world. The "world-view" of the ten-year-old differs from that of the five-year-old or the three-year-old.

The most famous cognitive development theory, and thus the one which has received the most research attention is that of Swiss psychologist, Jean Piaget.[24] Piaget's theoretical research was the reference point for both the Commission analysis, and public commentary, on the issue of cognitive development and the need for programs that reflect that reality. An understanding of the psychological concept of "cognition", and the varying stages of "development" in which it is manifested throughout childhood, is essential to the argument for age specific programming. In addition, it buttresses the legal obligation fashioned by the Commission and the courts that within the definition of a "unique audience" children constitute an audience whose "special needs" must be served by a licensee attempting to responsibility program within the public interest standard.

The Commission's 1974 Policy Statement adopted the position that licensees' should provide distinct programming for two specific age groups of children: preschool and school age. While the Policy Statement did not establish a mechanism that would assess licensees' commitment to age specific programming, it made clear the

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[24] See Wartella, Vol. V.

Commission's position that age specificity was a particularly important aspect of the instructional and educational programming expected of all licensees. Noting that at the Policy Statement's issuance only one network presented "a commendable five hours per week for the preschool audience", the Commission stated its expectation that all licensees make a 'meaningful effort' in the area."[25]

As stated in the discussion of the overall amount of children's programming it is the Task Force's position that recognition of age-related differences is an essential element of responsible programming. We base that conclusion upon the 1974 Policy Statement and extensive independent research into the area of cognitive development.

In concert with the Second Notice, the Task Force hired Dr. Ellen Wartella to write a paper reviewing research which examines the effects of television upon children of various ages. Dr. Wartella prepared an expansive document that responded to questions raised by the Commission.[26]

The picture that emerges from Dr. Wartella's research is that in every dimension critical to the comprehension of television and its programmatic messages, children are at a cognitive

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[25] 50 FCC 2d 1 (1974).

[26] See Wartella, Vol. V.

disadvantage. Moreover, the degree of the disadvantage fluctuates in direct proportion to the age of the children, with younger children (preschoolers) representing the group least aware of the complexities of the medium.[27] By kindergarten, when adult like television viewing behavior begins, children have a rudimentary understanding of television. Children's interpretation of programs, however, appears to remain idiosyncratic. Children up to the ages of nine and ten have been shown to experience difficulty when asked to identify information essential to understanding plotlines. Further, these older children have been shown to have difficulty explaining character motivations for behavior, and they tend to describe characters in very superficial terms, such as appearance and behavior.

Considering all the evidence before it, the Task Force reaffirms its position that to program responsibly for children, licensees must recognize age associated differences in cognitive abilities. Despite the expressed expectation in the 1974 Policy Statement that licensees make a "meaningful effort" to air age specific programs, few licensees have demonstrated compliance. Broadcasters have not developed programs for preschoolers that make clear the distinctions between preschool and school age. In addition, the Commission does not presently require licensees to classify programs by age specificity.

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[27] See Wartella, Vol. V. Complexities refer to such techniques as "flashbacks", and complicated plot.

TABLE I

THE NUMBER AND PROPORTION OF NETWORK ORIGINATED AND SYNDICATED INSTRUCTIONAL PROGRAMS

	Total No. of Programs	No. of Instructional	Proportion Instructional	Z	Significance
A. Network Originated Instructional					
1973-1974	40	3	.075	z =.210	N S
1977-1978	34	3	.088		
B. Syndicated Instructional					
1973-1974	114	11	.096		
1977-1978	133	12	.090	z =.108	N S
C. TOTAL Instructional					
1973-1974	154	14	.090		
1977-1978	167	15	.090	z =0.00	N S

Chapter Three

IMPACT OF THE 1974 POLICY STATEMENT UPON THE SCHEDULING OF PROGRAMS FOR CHILDREN

The release of the 1974 Policy Statement marked the second occasion that the Commission specifically addressed the critical issue of scheduling as it impacted upon a licensee's "public interest" responsibility. Expressing its expectation of "considerable improvement" in the future, the Commission noted that it did not consider it a reasonable scheduling practice to relegate all children's programs to one or two days. While the Commission elected to stop short of codifying its position on diversity in scheduling, it recognized that diversity in programming would accomplish relatively little without diversity in scheduling. When the 1974 Policy Statement was issued, only one network presented a regularly scheduled program designed for children in a weekday slot. The questions included within the Second Notice relating to scheduling reflect the Commission's awareness of the continuing public concern over the issue, and an attempt by the staff to assess compliance with the Commission's 1974 mandate.

The Second Notice posed six questions germaine to scheduling:

A. What portion of instructional and entertainment programs designed for children is aired from

7 a.m. to 10 a.m. weekdays, 4 p.m. to 8 p.m. weekdays, 7 a.m. to 7 p.m. Saturdays and Sundays?

B. Has there been "considerable improvement" in the proportion of programs designed for children aired on weekdays since January 1, 1976?

C. What factors have been found to assist or inhibit a balanced program schedule for children?

D. An exception to the Commission's prime time access rule permits networks to air programs designed for children during the prime time access period, normally 7:30 p.m. to 8:00 p.m. (EST). With what frequency are children's programs scheduled by networks during the prime time access period?

E. The Commission also noted in adopting the prime time access rule that this time period was appropriate for licensees to use for local or independently produced programs to meet the needs of children or other ascertained interests in the community. To what extent is this time period used by licensees for this purpose?

Recognizing the diverse influences which might impact upon a particular licensee's approach to scheduling, the Task Force funded Dr. John Abel and Dr. Joseph Turow to conduct research on this topic. In addition, the Staff conducted its own study based upon information supplied by the Abel report.

Data supplied by Turow and Abel provided information regarding the scheduling of children's programs during Monday through Sunday and during various day parts.

Findings of the Turow Report

Turow's examination of scheduling followed several approaches--the time and day a show was scheduled, the number of times a week the program was televised, and the length of the program.

1. Time of Day and Scheduling

Over the years there was a decrease in the time and day a program was scheduled.[28] The percentage of programs in specified time designations gives an indication of how the range of scheduling choice declined after the early years of commercial television. In 1950-51, non-Saturday programming accounted for 78% of the 52 childrens' network series aired. By 1960-61, non-Saturday network programming made up 42% of the 31 children's series aired. In 1970-71, 11% of the 58 network children's series were non-Saturday programs. Beginning with 1972-73, the percentage figure rose to 18% of the 62 network series and during 1978 the percentage of non-Saturday programming rose to 19% of the 42 programs.

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[28] Turow reports that network children's programs were distributed across 11 time designations in 1950-51 and 1960-61; 5 in 1970-71; and 7 in 1976, 77 and 78 [includes the scheduling of a non-weekly afternoon series.] See Turow, Vol. V.

Most children's programming broadcast since the early sixties appeared on Saturday mornings, with Saturday afternoon and Sunday morning taking second and third places as periods for children's shows. Saturday morning shows comprised 10% of the total programs in 1950-51, 48% in 1960-61, and 69% in 1970-71. The number of Saturday morning children's programs dropped to 60% of the total in 1976-77. The decrease was due in part to the introduction of two "afterschool" series for children on weekday afternoons and of three "informational spot" series with 3-5 minute sequences dispersed throughout weekend time periods.

2. The Number of Times Per Week Programs Appear

The number of times a show appears in a week was reduced over the years. While 48% of the 52 children's programs in 1950-51 were telecast more than once a week, only 4% of the 49 shows in 1968-69 were shown more than once a week. That trend changed somewhat in the 1970's with a few more non-weekly series and the introduction of the short informational spots such as Multiplication Rock, Metric Marvels, and In the News that are broadcast several times on Saturday and Sunday. It should also be noted that beginning in 1970 Captain Kangaroo was broadcast five days a week (Mon-Fri) compared with six days a week prior to 1970. With these additional programs, the percentage of programs broadcast more than once a week increased to 12% during the 1970's.

3. The Length of Children's Programs

The length of most children's shows has been consistently thirty minutes with minor fluctuations. Approximately, 60% of the programs aired in the late 1940's and early 1950's were 30 minutes in length (with 15 minute and hour long shows making up the remainder). Thirty minute programs increased in prominence throughout the 1960's, so that by 1966-67, 95% of the network children's shows were thirty minutes in length. The predominance of the half hour show was altered somewhat in the 1970's. Hour long programs were more frequently aired in the 1970's, as well as, programs less than 15 minutes in length, such as, In the News. Despite these adaptations, 60-80% of the shows aired during the 1970's have been thirty minutes in length.

Turow's work reaffirms the conclusion that network children's series are still predominately aired during the weekend, although, since January 1, 1976, there have been slightly more children's programs aired on weekdays than prior to that date. The weekday change is attributed to the introduction of late afternoon specials. Children's weekday programs are not generally scheduled on a daily basis. Most weekday children's programs are aired once a week or month and are likely to be one half hour in length.

Findings of the Abel Report

The Abel report examines the amount of children's programming scheduled throughout the week and according to various day-parts.[29] Again comparisons were made between 1973-74 and 1977-78 composite weeks. Data reported in the Abel study indicate that during the 1977-1978 composite week, 39.2% (1,082) programs of all children's programs were aired on Saturday and during 1973-1974, 44.4% (1,214) programs were aired on Saturday. The amount of children's programs scheduled on Sunday decreased during the 1977-1978 composite week when compared with the 1973-1974 composite week. During the 1977-1978 composite week there were more children's programs aired on Monday, Tuesday, Thursday, and Friday than during the composite week in 1973-1974. Overall, 53.7% (1,469) of childrens programs were aired during the weekend in the 1973-1974 sample week compared with 47.3% (1,305) aired during the weekend in 1977-78.

Analyzing the data according to network affiliates and independent stations shows the majority of network affiliate children's programs is aired on the weekends (a finding consistent with the Turow Report). The majority of independent stations' children's programs is broadcast weekdays. This pattern is consistent for both 1973-1974 and 1977-1978.

Comparisons were made between composite weeks to determine if differences exist in the average number of minutes per station devoted to children's programs for both independent stations and network affiliates. These comparisons illustrate the extent to which independent stations and/or network affiliates are devoting more time to children's programs on Saturday through Friday during the 1977-78 composite week compared with the 1973-74 composite week. The data show independent stations devoted significantly more time to children's programs on Monday, Wednesday, Thursday, and Friday during 1977-1978 compared with 1973-1974. The remaining days showed no statistically significant differences between the two composite weeks.

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[29] See Abel, Vol. IV.

The average amount of time per network affiliate station devoted to children's programs was significantly greater during the 1977-78 composite week for Saturday and Monday than during the 1973-74 composite week. On Sunday, Tuesday, Wednesday, and Friday, network affiliates devoted significantly less time to children's programs during the 1977-78 composite compared with the 1973-1974 week. There were no significant differences between the two composite weeks for the remaining days.

Examining the time of day when children's programs are aired, the Abel data show that during the 1973-74 sample week, well over one-third (40.6%) of all children's programs were aired from sign-on until 9 a.m., another one third (34.6%) of children's programs were aired between 9 a.m. and noon. The smallest percentage (6.9%) of children's programs was aired between 4:30 p.m. and 9:00 p.m. The pattern is repeated for 1977-78 sample week, however, there is an increase in the amount of programming aired between noon and 4:30 p.m. and a slight increase between 4:30 p.m. and 9:00 p.m. during the 1977-1978 composite week.

While the majority of network affiliates' children's programs was aired from sign-on until noon, the majority of independent stations aired children's programs between noon and 6:30 p.m. for both years. Comparing sample weeks, the network affiliates aired more children's programs between sign-on and 7:00 a.m. in 1977-78 than in 1973-74. Network affiliates aired fewer programs from 7:00 a.m. until noon during the 1977-78 week compared with the 1973-74 week. The noon until 9:00 p.m. day-parts for 1977-78 show more network affiliates children's programs than during the same day-parts for 1973-74. Across all day-parts, excluding the 6:00 p.m.-9:00 p.m. day-parts independent stations aired more children's programs during the 1977-78 sample week compared with the 1973-74 sample week. Independent stations emphasized the noon until 4:30 p.m. day-part where approximately 40% of their children's programs was aired (for both 1973-74 and 1977-78).

Average Number of Minutes by Day-Part

Comparisons were made between the two composite weeks for independent stations and network affiliates based upon the average number of minutes devoted to children's programs according to day-parts. According to the data in Abel's report, independent stations devoted significantly more time to children's programs during the sign-on - 6:59 a.m., 7 a.m.-8:59 a.m., and noon-4:29 p.m. day-parts during the 1977-78 week compared with the 1973-74 week. There were no significant differences between the two composite weeks for the remaining day-parts.

Network affiliates devoted significantly more time to children's programs during the sign-on-6:59 a.m., noon-4:29 p.m., and 6 p.m.-8:59 p.m. day-parts during the 1977-78 week compared with the 1973-1974 week. The network affiliates aired significantly less program time during the 7:00 a.m.-8:59 a.m. and 9:00 a.m.-11:59 a.m. day-parts during the 1977-78 week compared with the 1973-74 week. There was no significant difference between the two weeks for the 4:30 p.m. - 5:59 p.m. day-part. The amount of instructional programming available to children has not changed significantly since the 1974 Policy Statement.

Various parties maintained that there has been no considerable improvement in scheduling practices and that there has been little change in the proportion of programs designed for children aired on weekdays since January 1, 1976.[30] In regard to instructional programming only, Romper Room contended that of 208 television stations surveyed in the top- 50 markets, 109 stations or 52.4% broadcast no such programming on weekdays (Monday-Friday), and 77 stations or 37% broadcast at least one half-hour of instructional programming on Saturday or Sunday, but none during the week.

The three major commercial networks acknowledged that the major part of their respective children's programming is fed to their owned and operated stations and affiliates on Saturday and Sunday, but the networks emphasized that their weekday programming efforts for children have increased significantly. For example, NBC noted that since 1976, approximately 2% of the children's programs on NBC's owned and operated stations were broadcast on weekday mornings, 3.5% on weekday afternoons, 3% on weekdays between 4:00 p.m. and 8:00 p.m., 89.5% between 6:00 a.m. and 7:00 p.m. on Saturdays and Sundays, and 2% between 7:00 p.m. and 8:00 p.m. on weekends. Although not readily apparent from NBC's comments, the Task Force assumes that this latter figure includes The Wonderful World of Disney as a children's program, rather than a family entertainment program. NBC asserted that these figures represent a significant improvement as compared to the dearth of children's weekday programs prior to 1976. CBS maintained that in addition to its regular weekday broadcasts of Captain Kangaroo from 8:00 a.m. to 9:00 a.m., EST, the CBS network also aired eight special children's programs during the 1977-78 season on Thursday afternoon from 4:00 p.m. to 4:30 p.m., EST and aired the Joey and Redhawk miniseries in December, 1978, on five consecutive weekday afternoons. ABC emphasized its efforts to improve the quality and scheduling of such programs as the ABC Afterschool Special, normally broadcast from 4:30 p.m. to 5:30 p.m. EST on weekdays, the ABC Weekend Specials, and Kids Are People Too, normally broadcast on Sunday 10:00 a.m. to 11:30 a.m., EST. All three networks asserted that their respective owned and operated stations provide additional locally produced and syndicated series and specials during weekdays.

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[30] Comments of Action for Children's Television, p. 17 (January 15, 1978); Comments of Coalition on Children and Television, (February 12, 1979); Comments of Washington Association for Television and Children, (February 12, 1979).

Under Westinghouse Broadcasting Company (Group W) policy, each of the five Group W stations must provide: (1) a daytime (Monday-Friday) morning informational program (½ hour), either locally produced or made available by another Group W station, designed for pre-school or early school aged children, for broadcast during summer or other school vacation periods; (2) four prime time (½ hour) educational, informational, or public affairs programs per year for children; (3) one late afternoon after-school special per month (½ hour) for school-aged children per month.

According to the NAB, its three studies of children's programming (in twenty television markets, three markets, and one specific market) indicate that on a market-by-market basis the scheduling, amounts, and types of children's programming are more than adequate.

The Independent Television Association (INTV) and several individual comments filed by independent television licensees stressed the difference in program scheduling strategies between independent stations and network affiliated stations. Independents acquire their own programming and create their own program schedules, while network O & O's and affiliates are able to rely upon the networks for most of their programming and scheduling. According to the INTV, independent stations have traditionally counter-programmed against the networks during the late afternoon and early evening, i.e., independents have scheduled new and off-network family and children's programs during these hours. Therefore, argued INTV and several other independent licensees, the three major commercial networks should not be required to air additional children's programs during weekdays if such programming is available on independent or educational television stations within the relevant television markets. Otherwise, INTV asserted, such requirements would impinge upon the independent stations' current counter-programming efforts.

ACT submitted in its comments that factors inhibiting balanced program scheduling for children included the demands of advertisers that children's programming be aired at times when the child audience is the largest proportion of the total audience. ACT also mentioned the pre-emption of Saturday afternoon children's programming by sports programming. Other inhibiting factors listed by Romper Room were the NBC and ABC morning adult news programs that are aired between 7:00 a.m. and 9:00 a.m.. These programs make affiliates' clearance for morning children's programs difficult. The increase in the number of stations selling morning time to religious programming groups has also reduced the airing of children's programs.

ACT and WATCH asserted that the prime time access period is infrequently used to schedule children's programs of any source (network, locally, or independently produced) despite the Commission's intention when the rule was promulgated. Romper Room stated that it is unaware of any television stations in the top-50 markets which air regularly scheduled, network or locally-produced children's programs during the prime time access period. Network and other group owner filings tended to dispute this assertion.

Regarding ACT's and WATCH's assertion that traditionally the prime time access period is infrequently used to schedule children's programs, the data indicate that during the two sample weeks there has been no significant change in utilization of this time period for children programs.

Staff research illustrates that the amount of weekend children's programming is minimally decreasing, while weekday (Monday-Friday) programming shows a minimal increase in the amount of children's programs scheduled. This increase can be attributed to programming by independent stations.[31]

Approximately 50% of children's programming is still being aired during the weekend. During the day, children's programs are likely to be aired between sign-on and noon. The 1977-78 sample week had more afternoon children's programs scheduled then did the 1973-74 sample week. Although there is an indication of a shift of some programming from the morning to afternoon periods, over 50% of network affiliates programming is still broadcast from sign-on until noon, while over 50% of independent stations' programming is broadcast between noon and 6:30 p.m.[32]

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[31] Most independents are found in the top fifty-two markets. See Abel, Vol.IV.

[32] This figure reflects counter programming by independents.

Finally, investigating the incidence of instructional programs, the Staff found that such programs are most likely to be scheduled between 7 a.m. and 9 a.m. weekdays. This practice was found on both network and independent stations. Regarding overall programming, some effort by network affiliates has been made to schedule children's programs during the week (Monday-Friday) and at times when children are likely to be viewing, however in most instances, the differences between pre and post January 1, 1976 are statistically insignificant.

CHAPTER FOUR

IMPACT OF THE 1974 POLICY STATEMENT UPON OVERCOMMERCIALIZATION ON CHILDRENS' TELEVISION AND RELATED ADVERTISING ISSUES

A persistent issue in this proceeding has been whether advertising to children should be reduced or eliminated. The concern has been that children, particularly preschool and young school age children, do not have the cognitive capabilities to understand the selling intent of commercials and that, therefore, selling to children takes unfair advantage of their youth and inexperience.

During the course of this proceeding, parties have criticized the amount of commercial matter directed at children, the frequency of program interruptions, the link between program characters and advertised products, the lack of adequate separation devices, and the advertising of products which some parties consider harmful to children (e.g. highly sugared products, movies). These criticisms and suggested remedies have come in the form of formal filings in this proceeding as well as several hundred letters from individuals concerned with this issue.

Since the early 1970's the Commission had entertained a number of requests from citizens groups to substantially reduce or eliminate commercials on children's television. Broadcast industry representatives have stated that advertising is their economic lifeblood and provides the revenues necessary to produce programs.

In addition, they explain that largely for demographic reasons, programming for the child audience is either not profitable or not as profitable as programming for other segments of the population. If commercials were eliminated, broadcasters argue, children's programs would be totally eliminated or substantially reduced in quality and quantity.

Consistently, the Commission's policies have been designed to insure that broadcasters do not engage in excessive or abusive advertising practices and that licensees maintain the priority of public interest considerations over the financial interests of licensees. In the 1974 *Policy Statement*, the Commission expressed the expectation that licensees would make a "good faith effort" to conform to the limits of the NAB *Code*.

Earlier proceedings on overcommercialization found the Commission deferring to the Federal Trade Commission on issues of false and deceptive advertising practices. The Commission confined its own role in this area to notifying stations that the broadcast of material found to be unfair and deceptive by the FTC would raise questions as to whether the station was operating in the public interest.[33] At present, the Federal Trade Commission is conducting a proceeding on whether advertising to children is inherently false and deceptive. In this chapter we evaluate licensee adherence to the agreed upon limits on commercialization on children's programs, and the necessity of adequate mechanisms for separating program from commercial matter.

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[33] *National Broadcasting Co., Inc.*, 52 FCC 2d 273,292 (1975).

The 1974 Policy Statement established that there existed a "serious basis for concern about over commercialization on programs designed for children," and underscored the importance of the Commission's policies against overcommercialization. The Commission chose to reject, however, the notion of total elimination of commercials on programs designed for children. "It seems unrealistic," stated the Commission, "to expect licensees to improve significantly their program service to children and, on the other hand, to withdraw a major source of funding for this task."[34] Instead, the Commission chose to adopt newly revised standards that had been adopted by the National Association of Broadcasters. Under the amended NAB Code[35] standards, the amount of non-program material time was reduced on weekends from 12 minutes to 9½ minutes per hour, a figure comparable with standards for prime time programming, and on weekdays, from 16 minutes to 12 minutes, a standard developed to ease the financial impact of a reduction on independent stations, which program for children primarily on weekdays.[36]

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[34] 50 FCC 2d at 11 (para 35).

[35] National Association of Broadcasters, The Television Code (20th ed. 1978) [hereinafter cited as NAB Code]. Pertinent sections of the NAB Code are reproduced as Appendix A of this Chapter.

When it deferred to self regulation via the NAB Code, the Commission made clear its expectation of "good faith efforts" to comply; the Commission stated that all licensees must meet the Code standards and that findings of overcommercialization would raise questions as to the adequacy of the broadcaster's overall performance. The Commission concluded by stating that if self regulation were not effective, it would consider promulgating rules to ensure that licensees meet their public interest and service obligations.

The Second Notice sought data on the following areas:

(a) To what extent are licensees meeting the NAB Code standards for programs designed for children? Does compliance differ between licensees who do and do not subscribe to the Code?

(b) If violations of NAB Code standards exist, what is their frequency and magnitude—for Code and non-Code subscribers?

(c) Does the rationale adopted by the industry in 1974 for less stringent NAB Code standards on weekdays (12 minutes) than on weekends (9½ minutes) continue to have a rational basis?

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[36] 50 FCC 2d at (para 40).

(d) To what extent are licensees using the NAB *Code* definition of "non-program material" or some other standard such as "commercial matter?" Does this differ between *Code* and non-*Code* subscribers?

(e) To what extent have some licensees adhered to standards in their children's programs which are more stringent than the NAB *Code* standards? Does this differ between *Code* and non-*Code* subscribers?

(f) What has been the financial effect of such reductions beyond *Code* standards on these licensees?

The Staff conducted its own analysis of licensee compliance with non-program material limits as the filing parties submitted conflicting data.[37] The parties differ on key points such as the definition of non-program material and the adequacy of the NAB *Code* as a mechanism for measuring compliance with the 1974's *Policy*

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[37] *See generally*. Comments submitted in response to question 45 of *Second Notice of Inquiry* in Docket No. 19142 (1978).

Statement.[38]

Evidence was presented that licensees were exceeding non-program material time standards.[39] Comments filed by NBC and CBS also documented isolated cases of network violations of the NAB *Code* limits for children's programs.

The Task Force analyzed the amount of time devoted to non-program material aired during Saturday morning programs on 52 selected stations across the country. The Commission focused on three major issues: (a) Compliance with time limitations on overcommer- cialization (b) Separation of program matter from commercial matter and (c) Compliance with the host-selling and tie-in bans.[40]

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[38] Non-program material refers to commercial messages, public service announcements aired only on independent stations, billboards, promotional announcements, and credits in excess of 30 seconds for programs 90 minutes or less in length. In programs longer than 90 minutes, credits in excess of 50 seconds shall be counted against the allowable time for non-program material. Within children's programs aired on Saturday and Sunday, "non-program material shall not exceed 9½ minutes in any 60 minute period," and shall not exceed 12 minutes on children's programs aired in any 60 minute period on Monday through Friday, (NAB *Code*, *supra* note 3 at 18-19.

[39] *See comments of Washington Association for Television and Children; Comments of Action for Children's Television; comments of Coalition on Children and Television-South.*

[40] Vol. III contains the staff study, its methodology, and a list of programs analyzed.

A. Compliance with Commercial Limits

Based upon the examination of 67 hours of Saturday morning children's programs broadcast on a sample of network affiliates and independent stations, the Task Force concludes that on an aggregate basis, network affiliates and independent stations were generally not in violation of Code standards for non-program material. Using the 1974 Policy Statement as the standard for compliance, two general conclusions may be reached:

(a) network affiliates often failed to comply with the 9½ minute standard, although the variation between the stations in compliance and stations failing to comply fell within a narrow range;

(b) independent stations displayed wide variance in compliance, with many falling well under guidelines for non-program material, while others greatly exceeded the standard.

B. Separation of Program Matter from Commercial Matter

The 1974 Policy Statement instituted the requirement that all licensees maintain a "clear separation" between program content and commercial message. The requirement was adopted to assist young viewers in distinquishing between programming and advertising, thereby avoiding any unfair advantage that an advertiser might have over a young viewer who is unable to take the paid status of the commercial message into consideration.

While stating that special measures should be taken by all licensees to ensure adequate separation, and providing examples of various devices, the Commission did not endorse any particular technique in its 1974 Policy Statement. The Staff noted that as a result of discussions between the FCC Chairman and the NAB Code Authority, the NAB Code was modified to require the use of a separation device on all programs originally designed for children.[41]

The Second Notice sought to determine the extent to which licensees were complying with the separation policy and to learn what types of separation devices were utilized.

In response to these questions, public interest groups stated that a momentary fade to black was insufficient and that it was often difficult even for adult viewers to distinquish when a separation device had been inserted between a program and a commercial. A study by the Atlanta Council for Children's Television monitored 30 hours of children's programs aired by Atlanta Licensees one Saturday morning and one weekday. The study found fade to black was used in 112 of 156 transitions between programs and commercials, 38 instances of blank screen plus an announcement such as "don't go away," stay tuned for ... after these messages," or "now back to the show" and 6 instances in which no detectable separation device was used.[42]

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[41] 50 FCC 2d at 16 (para. 49); The NAB Code states that:

> Commercials, whether live, film or tape, within programs initially designed primarily for children under 12 years of age shall be clearly seperated from program material by an appropriate device.

NAB Code, supra note 3 at 13.

Most industry parties report that they follow the NAB Code and do not elaborate on their local policies or the types of separation techniques that are used. The three networks each stated that separation devices were used in all programming designed for children.

One network, ABC, described its techniques, referred to as "bumpers", in considerable detail. Since 1974, ABC has used animated visual or static art cards, sometimes accompanied with music and/or aural identifications; bumpers were of 5-10 seconds duration. Recently ABC has been adding audio to existing video bumpers, inserting 5 second animated spots with positive racial, sexual, and ethnic stereotypes and adding to all bumpers an audio announcement that the program will "return" or "continue" "after these messages." ABC is currently preparing standardized visual separators for all its children's programs.[43]

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[42] Comments submitted by Atlanta Council for Children's Television at 5.

Not all separation devices are so comprehensive. Metromedia, owner of independent stations, reported that video bumpers were "irregularly" used when they are provided by the program distributor. Without providing specifics, Metromedia stated that "a variety of factors ordinarily result in a clear separation between program and commercial material without any need to resort to artificial 'separation.'"[44] Another independent group owner utilizes a two second slide. One licensee notes the use of a variety of cues such as music, fades, white to black, and audio announcements. A syndicator suggests that the program host say "we'll be back in a moment," followed by a slide of a child's artwork and music for approximately three seconds, or a shot of a stop sign and music.

It is clear that there exists considerable diversity in style, format, and length of separation devices. It is also clear that there are many inconsistent interpretations of what can appropriately be considered a separation device. The NAB reports that "going to black" is not sufficient as a separation technique, and yet it is a widely used practice reported to us by some licensees and confirmed by the Atlanta Council study discussed above.

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[43] A standardized separation device in the form of a starburst and a distinctive audio sound has been consistently utilized on the independent broadcasting system in Great Britain,—one of the few remaining systems which permits any advertisements on children's programs. [A discussion of clustering of commercial matter as a separation technique is included as Appendices B and C].

[44] Comments submitted by Metromedia, at 28.

Given the broad array of techniques used, the question of industry compliance remained, as did the question of the sufficiency of the existing policy and its ability to impact upon this controversial issue.

Because of the aforementioned uncertainty the Task Force staff undertook a research project which sampled thirty hours of Saturday morning children's programming. The results of this study show that:

(1) the most frequently used separation devices utilize both audio and visual techniques;

(2) the average length of separation devices aired on network affiliates was 7.68 seconds, compared with 7.25 seconds on independent stations;

(3) separation devices are more likely to be used before commercials, however, the use of separation devices before and after commercials are also frequently used.

In light of the diversity of types of separation devices in use, and the conflicting opinions contained in the comments received as to the effectiveness of some devices, the staff conducted its own review of the social science research in this area. In the 1974 Policy Statement, the Commission referred to a number of separate studies that indicated that children cannot easily distinquish between programming and advertising. Since the imposition of the Commission's policy, only one research study has been conducted to determine the efficacy of separation devices. The study, which compared the responses of children to commercials appearing with and without separation devices, concluded that: "separation devices provide significant lead time in making children aware that a commercial is coming on .... The data does not reveal whether such lead time aids children in making conceptual distinctions between commercials and program content."[45] The research is inconclusive of the issue. Therefore, while it does contain support for the maintenance of separation devices, it does not dispose of the issue sufficiently to warrant any change in the Policy Statement at this juncture.

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[45] Palmer, Edward L. and McDowell, Cynthia N., "Program/Commercial Separations in Children's Television Programming", (to be published in Journal of Communications).

C. Host Selling

The 1974 Policy Statement found that the practice of host selling is an unfair advertising practice that should be eliminated. The Commission's concern was twofold: that host-selling takes unfair advantage of the difficulty young children have in distinquishing between programming and advertising; that host-selling abuses the trust which children place in statements made by program characters.[46]

In addition, the Commission recognized that advertisements in which program characters deliver commercial messages on other children's programs may also take advantage of the trust that develops between the child viewer and the performer.[47] The Commission, however, chose not to prohibit this particular practice because of concerns that small broadcasters with limited staffs could not avoid utilizing the personnel on children's programs to present commercial messages on other programs. Consequently, the Commission cautioned licensees to be particularly sensitive to using program personalities in their distinctive character roles as sellers of commercial products on other programs.

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[46] 50 FCC 2d at 17 (para. 52).

[47] 50 FCC 2d at 17 n. 20.

In the Second Notice, the Task Force sought information on whether licensees have adhered to the admonition against host-selling and whether the ban should be extended to prohibit hosts from selling commercial products in all programs designed for children.

Both public and industry filings agree that host-selling, as defined by the Commission, has been virtually eliminated, however, the practice of employing popular children's TV characters in advertisements remains.[48] Under the existing standard, for example, Fred Flintstone appears in commercials for Flintstone vitamins, and Bill Cosby, host of Fat Albert and the Cosby Kids, appears in ads for certain food products on other programs. It is argued that these practices violate the spirit if not the letter of the Commission's policy. An additional suggestion was that program characters, both live and animated, only be permitted to appear in commercials with an identification that they are paid commercial actors.

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[48] At least one instance of a breach of the host-selling ban has been identified. Uncle Al, program host of the long running Uncle Al Show on WCPO-TV, Cincinnati, Ohio, was found to have made commercial announcements on his program. WCPO, the licensee that airs The Uncle Al Show, has been admonished for this violation.

Virtually all industry filings were opposed to any extension of the host-selling prohibition.[49] INTV noted that any extension would cause confusion over the extent of applicable programming and that ultimately a broader ban would eliminate selling by any television personality to children. Others note that an extended ban would unfairly restrict work opportunities for program characters, undermine the revenue base necessary for children's programs, and would be difficult to police. The Producers Association for Children's Television (PACT) stated that parties desiring to extend the prohibition have not explained how the use of program characters harms children.

The staff study that reviewed one hour samples of the aforementioned Saturday morning programming found no instances of host-selling. Accordingly, the Task Force concludes that the host-selling prohibition has been effective. The elimination of host-selling has not been without its consequences. It has been a probable factor contributing to the elimination of locally produced children's programs. While the disappearance of locally produced programs is largely due to marketplace forces such as the cost efficiencies of national distribution, it appears that some licensees have also determined that if the program host must refrain from selling commercial products, there is no further need to retain the host. Thus, it appears that the Commission's host-selling policy has played a part in a programming trend--the elimination of locally produced programs--that may have been inevitable because of marketplace pressures.

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[49] The NAB code provides that:

> No children's program personality or cartoon character shall be utilized to deliver commercial messages within or adjacent to the programs in which such a personality or cartoon character regularly appears. This provision shall also apply to lead-ins to commercials when such lead-ins contain sell copy or imply endorsement of the product by program personalities or cartoon characters.

NAB *Code*, *supra* note 3 at 13.

Reviewing the question of extending the host-selling ban, the staff finds that such action would not be without costs. It may develop that given the financial attractiveness of appearing in commercials, as compared to the financial rewards of appearing in children's programs, many program personalities may choose to forego children's television for the more lucrative advertising arena. Given the reality of the commercial lure, and the possible costs flowing from the initial ban, i.e., elimination of locally produced programs, the benefits of additional regulatory action in this particular aspect of children's television do not outweigh the possible costs that extending the ban may have upon commercial broadcasting as a whole.[50]

D. Product Tie-Ins

Licensees were cautioned in 1974 against engaging in advertising practices that promoted products used in the body of the program in such a way as to constitute advertising. Such practices, stated the Commission, take unfair advantage of children's lack of sophistication regarding the selling intent of commercials.[51]

In the Second Notice the Staff sought information on the extent to which licensees have complied with the Commission's policy. Virtually all parties commenting on this issue have stated that licensees are adhering to the prohibition, and that the practice of product tie-ins has been eliminated. Task Force research confirms that conclusion. Thus, the practice of product tie-ins apparently has been effectively eliminated and no further action on this issue is required at this time.

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[50] It should be noted that host-selling has also been prohibited in virtually every country in Western Europe. In addition, the majority of broadcasting systems also has prohibitions which prohibit program hosts from appearing in any commercial aired on television while some systems have instituted bans prohibiting a program host from selling goods or products in any medium. See Tony Smith, Vol. V.

[51] 50 FCC 2d at 17 (paras. 53-54).

APPENDIX A

NAB CODE AND CODE AUTHORITY

The NAB Code Authority is the self-regulatory organization which establishes and enforces industry standards and practices on advertising issues, including the time limits for non-program material. According to NAB figures, 68 % of all licensees subscribe to the Television Code.[52] Members include the broad spectrum of networks, affiliated stations and idependent stations.

Members in good standing receive the Code's seal of good practice which may be suspended or revoked for violations of the Code provisions. There are no other penalities for non-compliance with the Code. The Association of Independent Television Stations (INTV) has no separate television code. Its members follow the standards set by the NAB Code.

The Television Code establishes time standards for non-program material, a category which is more inclusive than commercial time. Time standards for children's programs apply to those hours other than prime time in which programs initially designed primarily for children under 12 years of age are scheduled. The Code limits the amount of non-program material to nine minutes, thirty seconds per hour on Saturday and Sunday and twelve minutes per hour on Monday through Friday. Children's programs scheduled in prime time use the time standards established for prime rather than the time standards established for children's programming. Since prime time limit on non-program material is also nine minutes, thirty seconds, the standards are comparable. However, recent modifications to the NAB _Code_ may affect limits for non-program material during prime time. Amendments which will take effect on September 1, 1979 provide network affiliated stations with the discretion to include an addditional 30 seconds per hour of promotional announcements. Thus, non-program material on children's programs aired on Saturday morning may extend to ten minutes per hour.

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[52] National Association of Broadcasters, The Television Code (20th ed. 1978) [hereinafter cited as NAB Code). NAB Code, supra note 1 at 18-22.

The NAB _Code_ has also incorporated an averaging concept in the time standards. During programs of forty minutes in any day-part, the amount of permissable non-program time and the number of allowable program interruptions may exceed _Code_ hourly limits so long as the remaining program time contains less non-program material and fewer program interruptions. To summarize, the _Code_ now requires that an _average_ hour of programming comply with time limits rather than requiring that each hour comply with the _Code_ limits. [Other revisions in the _Code_ which apply to children's programs include an increased number of permissable program interruptions on children's weekday programming, an increased number of consecutive promotional program announcements within programs]. These _Code_ changes apply only to network affiliates. Independent stations still adhere to the previous Code standards.

APPENDIX B

Policies Towards Commercialization in Other Broadcasting Systems

An additional consideration is the differential effect of advertising on preschool and school age children. Pilot research by Blatt, Spenser and Ward (1971)[53] found that children five to twelve years of age could identify the term "commercials." Young children (preschool) were likely to characterize a commercial on the basis of coincidental reasoning, such as "commercials are shorter than the program."

Comparisons are frequently made between policies and rules followed in the American broadcasting system and those followed by broadcasting systems in Europe, Canada and Australia. Although the American system has, in many respects, become the model for systems in other countries, one major distinquishing feature is the policies which are followed for children's television. In order to develop a more complete record and a better understanding of how other countries have resolved the issue of advertising on children's programs, we commissioned a study to investigate and describe advertising policies in other broadcast systems.

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[53] Blatt, J., L. Spencer, and S. Ward, "A Cognitive Developmental Study of Children's Reactions to Television Advertising" Working Paper, Marketing Service Institute, Cambridge, Mass., 1971.

Although advertising to children has been an issue of long standing in European broadcasting systems, it has never attracted the controversy which it has in the United States. In large part, this difference is due to structural and legal differences between the American and European broadcasting systems. The American broadcasting system is a purely commercial venture deriving revenues from the sale of advertising time. European systems, to varying degrees, obtain their financing from the government. Thus, very few broadcasting systems, with the exception of the British commercial system and Australian broadcasting, which are both commercial ventures, rely on advertising as a source of revenue.

Secondly, there is no legal tradition of separation of government and press in the European systems. Consequently, regulatory authorities in Europe can implement reforms and modifications to policies without the multitude of procedures, findings and legal considerations which are a necessary part of our system.

Nonetheless, in spite of these fundamental differences, a review of advertising policies in other countries serves a useful purpose. A comparative study provides us with insights into the rationale for certain advertising policies as well as a baseline of experience with a variety of regulatory options.

Because most European broadcasting systems are fully funded by their governments, there is little or no need to sell commercial time. Where commercial time is sold on government run broadcasting systems, the commercials are kept to a minimum of 10 or 15 minutes per day and are aired in one or two blocks (hence the name "block advertising") during periods of high viewing. In these systems, commercials are never aired on children's television programs.

Great Britain and Australia both have commercial broadcasting systems. The Independent Broadcasting Authority (IBA) which is the self regulatory body for the British independent broadcasting system permits only six minutes per hour of commercial time and recently amended its rules so that no children's program of less than 30 minutes can be interrupted with commercial breaks.

In 1973, the Canadian Broadcasting Corporation (CBC) announced that the elimination of all advertising to children would have a detrimental effect; it projected an annual revenue loss of $2,000,000 because of this action and additional funds were allocated by the Canadian Parliament to compensate for the loss. Today, all children's television programming in Canada is free of commercials.

More recently the province of Quebec has developed broad ranging legislation which requires that all advertising to children below age 13 in any medium, be eliminated. Under this law, the context of the ad, the nature and market of the product and the time, manner and presentation of the ad will determine whether it is directed at a child audience. This law may eliminate all commercials directed to children in all media. After years of controversy, the

Canadian Supreme Court recently upheld the provincial law. As of March, 1979, the rules interpreting this legislation had not yet been issued.

In Ausralia, television advertising to children is at present a hotly debated issue, due to allegations that broadcasters were receiving license renewals without sufficient government consideration of their level of performance and that industry self-regulation was ineffective. The Australian Broadcasting Tribunal, an industry regulatory board, recommended in 1977 the establishment of a Children's Program Committee to Create guidelines for children's programming and advertising. Among the proposals under consideration by the Tribunal were clustering of advertisements, "pro-social" paid announcements, and elimination of advertising to children. The Tribunal rejected these specific proposals in favor of the creation of the Children's Program Committee. The Tribunal did, however, recommend the elimination of all advertising to pre-school children and the inclusion of pro-social messages, such as health and safety tips, as a substitute for advertising in these programs. In May, 1979, the Tribunal issued the first of a series of regulations which will require specified amounts of programming for pre-school and school age children at specified weekday hours. The tribunal has indicated that additional action on advertising will be forthcoming.

To summarize, in Western Europe and other major English speaking countries, the issue of commercialization to children is treated with more rigor than is exhibited in the United States. In most of Western Europe, there are either no commercials at all or limited amounts which are presented only in viewing time periods which are not designated as children's programming. The global trend is to provide greater protections to the child audience from commercial interruptions and purchasing messages and to replace these advertisements with pro-social messages. This development appears regardless of whether the broadcasting system is publicly funded or supported through commercial revenues. In virtually every instance, policies restricting or eliminating advertising were adopted without conclusive showings of negative effects of advertising on child viewers.

APPENDIX C

Clustering of Commercial Matter

In 1974, the Commission stated that clustering commercial matter at the beginning and end of a program was an appropriate technique for maintaining a clear separation betwen programming and advertising. The Commission also stated that while there was no necessity to require clustering, it would be appropriate to give further consideration to this matter at a future date.[54]

Last year, in the Second Notice of Inquiry, the Commission requested information about the current use of clustered commercial format on an advertiser's willingness to purchase advertising time. The Commission also inquired whether separation techniques assisted children in distinquishing between programming and advertising matter.

Filings submitted by advertisers and broadcasters, as well as information from staff discussions with industry representatives, indicated that clustering commercials is a rarely used technique, with the exception of Group W stations which cluster advertising on all locally produced and syndicated children's programs aired on its stations. Industry parties stated that clustering all commercials at the beginning and end of each program would reduce the effectiveness of each commercial message, thereby causing a reduction in the price of time and diminishing an advertiser's interest in purchasing time. Futhermore, it suggested that clustering commercials will also have a negative effect on viewers, who will resent lengthly blocks of commercial messages and may stop viewing when the blocks of commercials are broadcast. As an analogous situation, parties referred to the ongoing controversy between broadcasters and advertisers over commercial clutter. Finally, both broadcasters and advertisers stated that there exists no proof that clustered commercials provide any real benefit to the young viewer, citing research indicating that young children are more likely to watch and recall commercials in a clustered format than in a dispersed format.

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[54] 50 FCC 2d at 16 n. 18.

Action for Children's Television stated that, based on the Group W experience, clustering did not adversely affect an advertiser's willingness to purchase advertising time; however, ACT questioned whether clustering or any other separation device was sufficient to assist children in distinquishing between programming and advertising.

An analysis of the clustering concept must consider both the costs and benefits of changing from the present format of dispersing commercial messages both between and amidst programs.

Since commercial broadcasting systems in this country have had virtually no experience with clustered advertisements, we can only speculate on the effect of adopting clustered commercial formats. From the standpoint of the advertiser, a clustered format would appear to diminish the impact of any individual commercial because each commercial message is part of a larger block of commercials, and viewers may have difficulty recalling the message of any particular commercial within the block. Research has shown that in a clustered format, the first and last positions in the cluster are highly recalled while commercial positions in the middle are less likely to be viewed. Accordingly, under a clustered format, advertisers may bid up the price of commercials in the first and last positions. In addition, a clustered format may force two competing products to be placed contiguously in the same block--a practice which is assiduously avoided now.

There has been little experience with clustered fomats in this country. Group W, which clusters all advertising on locally produced and syndicated children's programs, has explained that it rotates all advertising through positions in the cluster and, therefore, charges a uniform price for all time within a cluster. On the other hand, Post-Newsweek stations report that they have terminated their experiment with clustered commercials on their locally produced children's programs.[55] Under their clustered format, commercial announcements were placed at the beginning and end of 30 minute programs and, on longer programs, clusters were placed at the half-hour breaks. Post-Newsweek (PNS) acknowledges that clustering did reduce commercial clutter and preserve program continuity, but determined that clustering was "ineffective and visually annoying." As PNS describes: "whenever a PNS originated children's program is scheduled adjacent to a network presentation, the closing cluster of commercials in the PNS program immediately precedes the station break commercials which are, after a brief program 'tease', followed by the first block of advertisements in the network presentation . . . Whenever two, half-hour PNS produced children's programs are adjacent, this negative on-air appearance is intensified since the child sees the closing cluster, a station break, and the opening cluster of the next program in rapid succession." PNS also explained that clustering commercials in syndicated children's programs was costly and impractical because of the double editing which was necessary (editing out commercial breaks and then replacing the breaks after the program was aired). Further,

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[55] Letter from Lynn McIntyre, Manager, Broadcast Standards and Practices, April 24, 1979.

PNS stated that eliminating program breaks destroyed the integrity and pacing of the program.[56]

There may, however, be certain benefits to the child viewer, particularly the young viewer, in clustering commercial messages. Two research studies have assessed the impact upon children of a clustered versus dispersed format. Neither study, however, directly measures children's ability to discriminate between commercials and program material. Atkin (1975)[57] assigned 500 children (pre-schoolers through fifth grade) to two treatment conditions: clustered and dispersed. Atkin concluded that overall attention to commercials was higher in the clustered condition when compared with the dispersed condition. He also found that there were no signifiant differences between clustered and dispersed conditions for recall of messages.

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[56] Certain of the Post-Newsweek criticisms of a clustered format would no longer be pertinent if the Commission adopted a policy of requiring clustering on all programs designed for children. First, since clustering would be adopted throughout children's programs, the pattern of commercial placement would no longer be visually annoying, except for the transition point between the last children's program and the first program for another audience segment. In syndicated programming, double editing would no longer be an expense factor, although three would still remain the one time expense of editing syndicated programming to accommodate revised commercial placements.

[57] Atkin, Charles, "Effects of Television Advertising on Children - First Year Experimental Evidence," Report #1, Michigan State University, June, 1975.

Duffy and Rossiter (1975)[58] conducted a study exposing first and fourth grade children to either clustered or dispersed commercial formats. The researchers found that first graders paid significantly more attention to commercials in the clustered format than their fourth grade counterparts. Among fourth graders, the dispersed format produced a significantly higher level of attention. The difference in formats did not produce any difference in commercial recall among either the first or fourth graders, a finding consistent with that of Atkin. Duffy and Rossiter conclude that when given the alternative of clustered or dispersed formats, children "strongly" prefer the clustered format.

Although Duffy and Rositer infer from their findings that clustered formats did not aid younger children in discriminating between programs and commercials, their data does not allow this conclusion to be drawn because the researchers did not directly measure the impact of clustering on children's ability to distinquish between programming and advertising.

Summarizing, the existing research, seems to indicate that children have a strong preference for viewing commercials in a clustered format, although it is unclear whether this preference is due to the perceived benefits of uninterrupted programming or the heightened attractiveness of clustered commercials. Recall ability appears equally strong whether a commercial is placed in a clustered or a dispersed format, perhaps because, even in a dispersed format, the viewer is accustomed to seeing several commercial messages and promotional announcements in each program break.

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[58] Duffy, John, and John R. Rossiter, "The Hartford Experiment: Children's Reactions to TV Commercials in Blocks at the Beginning and The End of The Program," paper presented at the 1975 Conference on Culture and Communications, Philadelphia: Temple University (March 1975).

It is clear that research must be conducted to test whether clustering is an effective mechanism for assisting young viewers in separating program from advertising matter.

Notwithstanding the lack of a clearcut answer to the efficacy of clustering as a separation technique, clustered commercials serve the additional function of permitting uninterrupted programming, or, in longer programs, only a limited number of commercial interruptions. In the public broadcasting system announcements and promotions are limited to designated periods between programs and promotional breaks within a program are severely restricted.

As we have noted, there has been little experience with clustered advertising in the United States. However, clustered advertisements, or a variation known as "block advertising"[59] is the only manner in which commercial messages are presented in European broadcasting systems. Other countries restrict block advertising to certain day parts when children's programs are not aired. Consequently, in these broadcasting systems children's programs remain commercial freer. Great Britain's commercial network has traditionally permitted clustered advertisements between programs throughout the broadcast day as well as in "natural breaks" within a program. Recently, revised standards developed by the Independent Broadcast Authority in Great Britain no longer permit any commercial breaks in children's programs or in any program of less than 20 minutes in length. In Australia, where government policies regarding children's programming and advertising practices are now being considered, clustered advertising is one proposal under serious consideration.

In all the broadcasting systems which practice some form of commercial placement which differs from the dispersed format employed in this country, clustering or block advertising has been established to control the intrusion of advertising on program content. To varying extents, this policy was adopted to prevent the establishment of the American system of a dispersed commercial format, which policymakers believed to be intrusive and disruptive to programming. Consequently, in every broadcast system the clustered or block format is not limited to children's programming, but is the format for all commercial messages throughout the broadcast day. In Great Britain, which permits clustered advertisements between children's programs, it is presumed that the clustered format itself aids children in discriminating between programming and advertising. To our knowledge, no research has been conducted in Great Britain to either support or disprove the validity of this assumption. It is clear from this discussion that a proposal to adopt a clustered format on children's programs will require a consideration of the social and artistic utility of a clustered format weighted against the equally unclear costs of changing the mode of commercial advertising.

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[59] In block advertising, all commercial messages are aired in one or two blocks of time approximately 10-20 minutes in length, usually during early evening hours, when viewership is high.

Given the limited evidence on both sides, the staff is persuaded that the welfare of child viewers should take preference over the costs of implementing a change in format.

CHAPTER FIVE

THE EFFECTIVENESS OF THE PRESENT LICENSE RENEWAL FORM AS A METHOD OF ASSESSING COMPLIANCE WITH COMMISSION POLICIES FOR CHILDREN'S PROGRAMMING

In 1975 the FCC amended Licence Renewal Form 303A to include questions regarding children's television.[60] The amendments to the form require licensees to provide the Commission with information regarding the amount of time devoted to advertising aired during children's programs and a sample list of children's programs aired by licensees.[61] The questions on Renewal Form 303A pertaining to children's television were specifically intended to assess licensees' compliance with the 1974 Policy Statement.[62]

In conjunction with the Second Notice the Task Force also evaluated the responses on renewal forms in order to:

(1) Assess the effectiveness of the license renewal

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[60] Memorandum, Opinion and Order, Docket No. 19142, 53 FCC 2d 161 (1975) (Renewal Form Amendments); Memorandum, Opinion and Order, Docket No. 19142, 58 FCC 2d 1169 (1975) (Instruction Amendments).

[61] Application for Renewal of License for Commercial Television Broadcast Station, FCC Form 303(A),§IV, Questions 7, 14 and 17 (1976).

[62] Children's Television Programming and Advertising Practices: Second Notice of Inquiry, Docket No. 19142, 68 FCC 2d 1344 at 1347 (1978).

form as a means of measuring compliance with the 1974 Policy Statement.

(2) Document problems associated with providing information in response to questions pertaining to children's television on Renewal Form 303A.

The Task Force focused specifically upon question seven in Section II of Renewal Form 303A, that asks licensees to...

> give a brief description of programs, program segments, or program series broadcast during the license period which were designed for children twelve years old and under. Indicate the source, time and day of broadcast, frequency of broadcast, and program type.

Licensees are requested to provide a response to question seven within a three page limit.[63]

Methodology

The 1977 and 1978 license renewal forms were examined.[64] The renewal forms were from 201 sample stations geographically distributed across the country. Information was tabulated regarding children's programs listed on the renewal form, and question seven was examined to see whether licensees were consistent in the manner in which they report children's programs (that is, are the same programs classified by some licensees as entertainment and by others as educational).[65] The responses to question seven were also reviewed to determine the frequency of programs appearing in specific program category classifications, i.e., educational, information and entertainment.

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[63] Application for Renewal of License for Commercial Television Broadcast Station, FCC Form 303, S4, p. i (1976).

[64] The stations whose forms were used are listed in Appendix A to this Chapter.

The Task Force found that:

(1) The three page limit does not enable licensees to answer question seven completely, and thus reduces the Commission's ability to have an accurate assessment of the status of children's programming.

(2) There is ambiguity and misapplication in the classification of children's programs, which provides an inaccurate profile of the types of programs that are actually aired for children.

Problems with the Three Page Limit

Many stations, in order to comply with the three page limitation, do not list all children's programs aired during the license period. Other licensees, in an effort to list all children's programs within three pages, "block" programs together, such as listing a 7:00 a.m. - 1:00 p.m. block of Saturday morning programming as "children's programs." Although many stations do not exceed the page limit, some simply note at the end of the exhibit that the listings were incomplete.

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[65] Two coders tabulated the data and reliability measure on approximately 20% of the renewal forms resulted in complete agreement between the coders.

Problems with Classification of Children's Programs

There is ambiguity and misapplication surrounding the classification of children's programs.[66] For example, if a licensee is uncertain as to a particular program category, it will frequently create a new program category such as "Religious/Instructional." Some licensees classify programs incorrectly, for example, Romper Room as "Other," and all Saturday morning cartoons as entertainment/instructional. Some programs, such as NBC's Special Treats, are defined differently by various affiliates, thus giving the program inconsistent classifications of "Entertainment", "Entertainment/Educational", "Various", "Instructional/Educational" or "Instructional/Educational". The problems associated with classifying children's programs make it impossible for Commission staff to evaluate responses accurately. The classifications that have been used indicate that either licensees are unsure of the FCC's objective, or that by creating new categories, they seek to present a programming schedule that appears heavily weighted toward instructional and educational programs.

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[66] See 47 C.F.R. § 73.670 Noe 1 (1979). For a complete listing of FCC definitions see Vol. II, ch. 5, App. B.

The manner in which program segments are listed further reflects problems associated with answering question seven. In the News, Schoolhouse Rock, and Metric Marvel are "programs" that are actually 2-3 minute segments shown during weekend children's programming. Stations listing each individual showing as a separate program have more "News" or "Instructional" programs appearing than those licensees listing all segments in block form as one program.

Likewise, there is considerable divergence in the listing of specials, to the point that the word "Special" is used as a program classification. Again, the NBC series of Special Treats exemplifies this point. Some licensees list each program separately, while other Licensees write the name of the series--Special Treats--and under that heading list some, all, or none of the individual segments in the series. The Charlie Brown Specials presented similar problems to licensees.

Programs that are watched by a large number of children, but are actually family entertainment, are often designated as "children's programs" despite not being specifically produced for children twelve years of age and under. Family programs that have been listed as children's programs include: Bill Burrad's Animal World, Macy's Thanksgiving Parade, The Brady Bunch, The Partridge Family, National Velvet, Bell System Family Theater, Family Classics, Star Trek, 20,000 Leagues Under the Sea, and World of Survival.

Furthermore, the presentation of the answers is sometimes inadequate. While some licensees provide all the necessary information in a clear manner, others do not. Although many give elaborate descriptions of the social and educational value of a show, some licensees still do not answer all aspects of question seven. There are many licensees whose answers are incomplete, or simply do not provide specific information about programs. Table 1 presents the frequency of program classifications according to network affiliates and independent stations.

The data presented in Table 1 indicate that approximately 61 percent of the children's programs were classified as entertainment; the remaining 39 percent were classified as non-entertainment. Instructional programs represented 17 percent of all programs. The combination of Instructional, Instructional/Educational, Instructional/Entertainment, Educational, and Entertainment/Educational categories represented 24 percent of all reported programs.

Conclusions

The information currently obtained from Question Seven on License Renewal Form 303A does not allow the Commission to assess accurately the licensees' programming efforts for children. Based upon the manner in which licensees report their programming, approximately 40% of all children's programming is non-entertainment in nature. This figure is significantly higher than the figures reported in the Turow report.[67] There is wide variability in the ways licensees report information pertaining to children's programs. The current process of reporting programs aired for children complicates Commission action based upon licensees' responsibilities toward children.

Based upon the social science research commissioned by the Task Force in conjunction with this report, there is ample support for the argument that the needs and interests of children are so unique as to require specific ascertainment by licensees. However, the Task Force did not receive sufficient comments addressing this issue to permit it to reach any further conclusions at this time.

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[67] Relying upon industry definitions Turow reported 13 percent of network children's programs are classified as non-entertainment. *See* Turow, Vol V.

APPENDIX A

Arizona - KOAI,KGUN, KBLU, KZAZ, KVOA, KTVK, KTAR, KPHO, KOLD, KOOL

California - KGSC, KGTV, KHSL, KIEM, KHOF, KJEO, KMUV, KEMO, KOOY, KDTV, KABC, KNBC,KXTV, KOST, KWHY, KVOF, KVIQ, KTVU, KTSF, KTTV, KTLA, KSBW, KSBY, KRON, KRCR, KDTV, KPLM, KPIX, KOVR, KNXT, KNTV, KBAK, KERO, KCOP, KBSA, KCRA, KAIL, KBHK, KJTV, KLOC, KLXA, KMEX, KMIR, KMPH, KMST, KEYT, KFMB, KFSN, KFTV, KGO

District of Columbia - WJLA, WRC, WDCA, WTTG, WTOP

Hawaii - KHVO, KITV, KMVI

Idaho - KIFI, KMVT, KID, KBCI, KIVI, KLEW, KTVB, KPVI

Louisiana - KTAL

Maryland - WJZ, WBAL, WBFF, WBOC, WHAG, WMAR

Nevada - KORL, KLAS, KVVU, KTVN, KSHO, KOLO

New Jersey - WTVG, WOMC, WKBS, WKTV

New Mexico - KMXN, KIVA, KOAT, KFDW, KBIM, KOB, KSWS, KAVE

New York - WPTZ, WROC, WNJU, WGR, WENY, WICZ, WBJA, WAST, WCBS, WIVB, WBNG, WKBW, WWNY, WUTV, WUTR, WIVH, WTEN, WSYR, WSYE, WRGB, WNYS, WOKR, WNYC, WNBC WHEC, WKTV, KNEW, WABC

Oregon - KCBY, KVAL, KTVL, KPIC, KOTI

Texas - KMID, KMCC, KLTV, KIII, KHTV, KAUZ, KBMT, KHOU, KGNS, KGBT, KFDX, KFDA, KENS, KDFW, KDBC, KCTV, KCEN, KCBD, KXIX, KXAS, KWTC, KVUE, KVII, KTVV, KTVT, KTSM, KTRK, KTRE, KRGV, KTBC, KSAT, KRIS, KOSA, KPRC, KMOL, KBTX, KAMR, KVIA

Utah - KUTV, KTVX, KSL

VIRGINIA - WHSV, WSET, WSLS, WCYB, WDBJ, WAVY, WVEC, WVIR, WWBT,
WXEX, WYAH

Washington - KXLY, KSTW, KNDO

West Virginia - WOAY, WOWK, WSAZ, WTAP, WBOY, WCHS, WTRF, WDTV

Wyoming - KYCU, KTWO

TABLE 1: FREQUENCY OF PROGRAM TYPE ACCORDING TO NETWORK AFFILIATION AND INDEPENDENT STATIONS

	ABC AFFILIATES		NBC AFFILIATES		CBS AFFILIATES		IND.		TOTAL
Program Type	N	%	N	%	N	%	N	%	N
Entertainment	1448	37.0	964	24.5	1200	30.7	303	7.7	3915
News	2	12.5	3	18.8	9	56.3	2	12.5	16
Public Affairs	46	45.5	27	26.7	28	27.7	0	0.0	101
Religious	31	27.7	38	33.9	30	26.8	13	11.6	112
Instructional	216	20.2	219	20.5	582	54.5	50	4.7	1067
Inst/Educational	53	24.0	101	45.7	42	19.0	25	11.3	221
Inst/Entertainment	39	36.8	40	37.7	15	14.2	12	11.3	106
Educational	16	19.0	37	44.0	20	23.8	11	13.1	84
Entertain/Educ	18	26.1	40	58.0	9	13.0	2	2.9	69
Unclassified	60	10.9	286	51.9	168	30.5	37	6.7	551
Other	37	25.9	55	38.5	22	15.4	29	20.3	143
Total	1966		1810		2125		484		6385
Local	60	21.1	94	33.1	103	36.3	27	9.5	284
Network	1827	39.8	1257	27.4	1507	32.8	4	0.1	4595
Recorded	308	23.3	352	26.6	306	23.1	358	27.0	1324
Syndicated	19	24.4	44	56.4	12	15.4	3	3.8	78
Unclassified	6	4.5	52	38.8	46	34.3	30	22.4	134
Other	23	28.0	2	2.4	33	40.2	24	29.3	82

PROGRAMS

	ENTERTAINMENT		NON-ENTERTAINMENT	
	N	%	N	%
ABC	1448	73.7	518	26.3
NBC	964	53.3	846	46.7
CBS	1200	56.5	925	43.5
Ind.	303	62.6	181	37.4
TOTALS	3915	61.3	2470	38.7

CONCLUSION

As stated in the Introduction to this Volume, the intent of the Second Notice of Inquiry was to evaluate the Commission's self-regulation policy, and if necessary to assess alternatives to those policies adopted in 1974. That evaluation occurred on two levels: (a) industry compliance with the goals and expectations of the 1974 Policy Statement; (b) an assessment of the Statement as a method of achieving those goals and expectations.

To accommodate the reader, the staff analyses relating to industry compliance were presented as distinct chapters, each corresponding to one of the several questions addressed in the 1978 Second Notice. To draw conclusions as to the impact of the Policy Statement as a means of achieving the Commission's goals, however, requires that we address the issues as a whole. It is the interrelation of the several issues that must ultimately determine the extent to which children's television has benefitted from the positions adopted in the 1974 Policy Statement. The goals of the Statement were sound in 1974 and the abundant social science research compiled by the staff indicates that those goals remain sound. It is the means of achieving those goals upon which the Second Notice is focused, and the Task Force concludes that, in its present form, the 1974 Policy Statement is not the most effective means of achieving that end.

With the exception of certain aspects of the advertising issue, the picture presented in chapters one through five is one of non-compliance with the 1974 Policy Statement.

In the first chapter, concerning the amount of programming available for children, data was presented that established that the total amount remained essentially unchanged.[68] What little change did take place did not represent an increase as intended by the Commission when it stated that it "expect[ed] television broadcasters as trustees of a valuable public resource to develop and present programs which will serve the child audience."[69] Rather, the increase represents the counterprogramming efforts of independents located primarily in the top 52 markets, and drawing upon syndicated programs.[70] The intent of the Commission was the development of new programs designed for children and in that effort, the Policy Statement was ineffectual.

Chapter Two concludes that there has been no compliance in the area of educational, informational and/or age specific programming. This failure occurred despite the Commission's expectation that licensees broadcast a "reasonable amount" of educational/informational programming, and that they make "some effort" towards a "meaningful effort" in the area of age-specific programs.[71]

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[68] Contrasting 1977-78 composite weeks with 1973-74 composite weeks. (Abel study)

[69] 50 FCC 2d 1974 [para. 16].

[70] Vol. II, Impact of 1974 Policy Statement Upon Overall Amount of Programming Designed for Children 12 and Under.

In 1974 the Commission not only spoke about the amount of programming, but also its scheduling. Children watch more television than any other segment of our society except women over 35.[72] Demographic data indicate that children watch television throughout the day, with a higher percentage of viewing during the weekday than on the weekend. The 1974 Policy Statement called for more programming during weekdays to reflect those facts. Yet, as shown in Chapter Three, present industry programming and scheduling practices do not reflect these facts.

Addressing the issue of the amount of advertising, Chapter Four concludes that there was compliance with the parameters of the Policy Statement. The caveat expressed in the Chapter is that while the Policy Statement succeeded in prompting an industry reduction in the amount of advertising time on children's television, it did not achieve the programming goals associated with the Commission's desicison to rely upon industry self-regulation.

When the Commisison elected not to codify rules on the amount of advertising, the decision represented, in part, a trade-off between the valid concerns of those who were concerned about the possible effects of commercials, and the recognition by the Commission that advertising is the sole economic foundation of the advertiser-supported broadcasting system.

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[71] 50 FCC 2d 1974 [para. 25].

[72] See A.C. Nielsen data.

Influencing the Commission's decision to rely upon the Code was the representation made by broadcasters that advertising was their economic lifeblood and provided the revenues necessary to produce programs.[73] Weighing the equities, therefore, the Commission determined that the benefits that would flow towards children's programming from the funds derived from advertising outweighed the possible, and undetermined, negative effects of allowing commercials to continue to be aired. Yet, despite the Commission's acceptance of and reliance upon industry representations regarding the relationship between advertising on children's television and program development, the total amount of children's programming, in general, and in particular the amount that was educational/informational and/or age-specific remained virtually unchanged. Thus, the evidence of this Volume on compliance must be weighed in concert with that Commission expectation in evaluating whether there has been compliance with the 1974 Policy Statement as a whole.

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[73] "Banning the sponsorship of programs designed for children could have a very damaging effect upon the amount of quality of such programming....[R]evenues from the sale of commercial time provide the financing for program production" (emphasis added) 50 FCC 2d 1974 (para. 35).

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The conclusion is that there was no compliance in the programming areas as defined by the Commission's 1974 expectations. Moreover, the measures employed within the 1974 Policy Statement did not address these areas in a manner that would compel that compliance.

The thrust of this Inquiry, however, is not punitive but prospective. Therefore, while the conclusion reached is one of industry failure to comply with the 1974 Policy Statement, upon reaching that conclusion, our assessment must turn to the Statement itself. We find that while the Policy Statement did not contribute to the industry's non-compliance, it was not an effective means for assurance of compliance.

Despite the soundness of its goals and expectations, the Policy Statement has not caused any substantive industry change in programming, and is unenforceable by either the Commission or the public.